

OPI PERSONNEL POLICY MANUAL



Revised: March 2002

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TABLE OF CONTENTS

POLICIES	PAGE
1. ADOPTION OF OPI POLICIES AND MONTANA OPERATIONS MANUAL	1-1
2. ALTERNATE WORK SCHEDULE	2-1
3. CLASSIFICATION	3-1
Attachment 3-A, Delegation of Classification Authority	
Attachment 3-B, Proposed Pay Project-Dept of Administration	
Attachment 3-C, Position Description Model Format	
Attachment 3-D, Position Description Model Format and Instructions	
4. DISABILITY, MATERNITY AND PARENTAL LEAVE AND MEDICAL CERTIFICATION	4-1
Attachment 4-A, ADA Request Accommodation Form	
5. DISCIPLINE	5-1
6. DRUG-FREE WORKPLACE	6-1
7. EDUCATION AND TRAINING ASSISTANCE	7-1
Attachment 7-A, Education and Training Assistance Agreement Form	
Attachment 7-B, Education and Training Expense Reimbursement Form	
8. EMPLOYEE RECOGNITION AND INCENTIVE AWARDS	8-1
Attachment 8-A, Employee Recognition and Incentive Awards Procedure and Forms	
Attachment 8-B, Incentive Awards Nomination Form	
9. EQUAL EMPLOYMENT OPPORTUNITY – NONDISCRIMINATION	9-1
Attachment 9-A, EEO-Nondiscrimination Complaint Resolution Procedure	
10. EQUALITY OF OPPORTUNITY FOR STUDENTS	10-1
11. ETHICS: CONSULTING AND CONTRACTING	11-1
12. EXEMPT COMPENSATORY TIME	12-1
13. FAMILY MEDICAL LEAVE ACT (FMLA)	13-1
Attachment 13-A, FMLA Leave Request Form	
Attachment 13-B, Medical Certification Form	
14. GRIEVANCE	14-1
15. HIRING AND RECRUITMENT	15-1
Attachment 15-A, Recruitment Form	
Attachment 15-B, Hiring Guide	

Attachment 15-C, Training Assignment Model Format

16. HOLIDAY LEAVE	16-1
17. JOB SHARING Attachment 17-A, Job Sharing Proposal Form	17-1
18. JURY DUTY AND WITNESS LEAVE	18-1
19. LEAVE WITHOUT PAY	19-1
20. MILITARY LEAVE	20-1
21. MOVING AND RELOCATION ALLOWANCE Attachment 21-A, Moving and Relocation Allowance Agreement	21-1
22. NONEXEMPT OVERTIME AND COMPENSATORY TIME	22-1
23. PERFORMANCE EVALUATION	23-1
24. PERSONAL TELEPHONE CALLS	24-1
25. PERSONNEL FILES AND EMPLOYEE RECORDS	25-1
26. PROBATION	26-1
27. PROFESSIONAL MEMBERSHIPS	27-1
28. REDUCTION IN FORCE	28-1
29. SEXUAL HARASSMENT Attachment 29-A, EEO-Nondiscrimination Complaint Resolution Procedure	29-1
30. SICK LEAVE	30-1
31. SMOKING PROHIBITION	31-1
32. TEMPORARY AND SHORT-TERM POSITIONS	32-1
33. TERMINATION-INVOLUNTARY	33-1
34. TRAVEL	34-1
35. VACATION LEAVE	35-1

1. ADOPTION OF OPI POLICIES AND MONTANA OPERATIONS MANUAL

The Superintendent of Public Instruction is a Montana Constitutional office. Montana Constitution Article VI, Section 1; Montana. Codes Annotated. §2-15-701. The Superintendent employs, organizes and administers a staff of personnel to assist in the administration of the duties and services of the office of the Superintendent. Mont. Code Ann. §20-3-103. That staff of personnel is known as the Office of Public Instruction.

Pursuant to the Montana Constitution and the electoral process, the Superintendent is essentially independent of the other elected executive officers. Except as otherwise provided for in law, the Superintendent's Office of Public Instruction is "an independent agency, able to make its own policy determinations and answerable ultimately only to the people of the people of Montana." 37 Mont. Op. Atty. Gen. 702 (1978) (citing Montana Constitution Article VI, Section 7).

The Montana Department of Administration is responsible for developing and issuing personnel policies for state employees, including those of the Office of Public Instruction. Mont. Code Ann. §2-18-102(3). The "Montana Operations Manual" is published by the Department of Administration, which Manual records procedures and policies relating to state personnel.

The policies outlined in this publication supplement and do not supplant personnel and other policies adopted by other agencies pursuant to law. However, the Superintendent reserves the right to challenge any policy imposed on the Superintendent's Office by another executive agency based on the independent agency doctrine described above. The Superintendent also reserves the right to adopt and modify policies of the Office of Public Instruction as necessary and pursuant to Montana law.

Effective:

Revision Effective: 3-02

2. ALTERNATE WORK SCHEDULE

DEFINITIONS

Alternate work schedule – a work schedule requested by an employee which allows the entire work day and work week schedule to start and/or end at an earlier or later time than the usual work schedule, 8:00 a.m. to 5:00 p.m., Monday through Friday.

Established work schedule – the standard is 8:00 a.m. to 5:00 p.m., with one hour for lunch, Monday through Friday schedule.

POLICY

Implementation of alternate work schedules in an Office of Public Instruction work unit is at the supervisor's discretion. Employees working in a work unit where alternate work schedules are implemented may request an alternate schedule by submitting a written request to their immediate supervisor. An employee's permanent schedule shall not be changed without 10 working days notice of the change. The 10-day notification may be waived by the employee or in emergency situations.

Alternate work schedules will generally be denied in instances where the change in schedule will result in important functions of the office not being covered for a period of time or where the efficiency of a work unit will be adversely affected.

Any alternate work schedule for a full-time employee must include at least a half hour lunch between the hours of 11:00 a.m. and 2:00 p.m.

Provisions of this policy apply only to alternate work schedules requested by the employee and not to work schedules established by management. Nothing in this policy limits the authority of the Office of Public Instruction to establish or change work schedules as necessary for the successful operation of programs.

Effective:

Revision Effective: 3-02

3. CLASSIFICATION

INTENT

It is the intent of this policy to provide a uniform and equitable means of classifying the OPI positions by evaluating and applying them, according to set standards, to appropriate classes and pay grades based on similarity of duties, responsibilities, and duty complexity. Classification delegation from the Department of Administration to the Superintendent of Public Instruction is documented in Attachment 3-A.

DEFINITIONS

Benchmark—is a representative position of an occupation defined and used as a classification guideline. It describes the duties and their relationship to the seven factors of the Benchmark Factoring Method (BFM) by illustrating how these factors apply to a particular type of work.

Benchmark Factoring Methodology—The “point factoring” classification system employed by the State of Montana to evaluate jobs. It is characterized by the use of “factors” that describe and evaluate compensable variables found in jobs. Points are assigned to each level within each factor, which when totaled, determines the grade of the position. Positions are then grouped into classes based on similarity of duties and responsibilities.

Reconsideration Review Panel—A panel or an individual from the cabinet of the Superintendent of Public Instruction, that provides a further investigation, review of and decision on the classification of a position.

Series Discussion—The guide for placing a position in the correct occupational grouping or class according to the type of work performed.

POLICY

I. Classification:

Position duties and responsibilities for a specific position will be analyzed and evaluated according to the Benchmark Factoring Method (BFM) standards when significant changes have been made to duties and responsibilities assigned to that position upon receiving a recommendation and signed position description by the appropriate management.

A. Position descriptions will supply the formal documentation of duties, responsibilities, knowledge, skills, abilities and behaviors (competencies) required to perform the position duties. A trained, state-approved classifier will analyze and evaluate this document and assign the position to the appropriate class title and pay grade according to the BFM standards as follows:

1. Determine the kind of work performed and the essential duties and apply these duties to the appropriate Class Series i.e., Accounting Series or Administrative Support Series.

2. Determine the factor levels for which the position's duties and responsibilities are "fully equivalent." (The predominant duties must be fully equivalent to the overall intent of the factor-level description in order to receive the rating.)
3. Apply benchmarks to corroborate the evaluation of the position. The controlling element when applying any factor is always the factor-level description.
4. Total the resulting factor level points according to the assignments in the BFM points schedule, which then converts points to pay grades.

II. Appeal (Internal)

A reconsideration process is provided through an internal appeal a process, which provides for agency management to request an investigation and reconsideration of a classification decision. This involves:

1. Initiation by the division administrator through the Personnel Officer for further investigation and review of the classification decision.
2. The OPI classification reconsideration will consist of at least one member or a panel from the Superintendent's cabinet. This member or panel will review further information and rationale provided by the classifier. This review may consist of a meeting with the panel or a one-on-one exchange; whichever is necessary for a definitive investigation.
3. The final decision in response to the reconsideration request will be provided to Personnel, the division administrator, the employee's supervisor and the employee.

III. Effective Date

The effective date of the classification and any related change in pay will be the first day of the pay period that includes the date of the agency-approved position description.

IV. Process for Position Classification

- A. A current position description defining the current required duties and responsibilities of the position is prepared by supervisory personnel and signed by the supervisor, the employee, the division administrator, the assistant superintendent and the Personnel Officer.

The position description model format and instructions regarding the classification system and providing proper duty and responsibility definitions are attached to this policy.

A current unit organization chart should be attached to the position description showing the relationships of the subject position to supervisors and management as well as those supervised.

An electronic copy of the position description is transmitted to Personnel for agency and State Personnel records.

- B. Upon signing the position description, the Personnel Officer initiates the classification action by appointing a classifier and providing the classifier with the position description and organization chart.
- C. The classifier analyzes the position description, evaluates the duties and responsibilities according to the BFM standards, documents the evaluation and conclusions on a Position Review Form (PRF), and submits the documentation to the Personnel Officer for approval and signature.
- D. The Personnel Officer will then advise the employee's management of the results of the classification review. Upon their agreement, Personnel initiates a letter to the employee, employee's supervisor and management and payroll. The letter will include the classification title, the employee's name, the class code, the grade level and the effective date. The effective date will be determined according to the effective date definition in this policy.
- E. Personnel shall keep a position file for each position with all classification documentation including the signed position description and Position Review Form (PRF), audit notes, organization chart, any supplementary information or comments and the classification letter reflecting the classification review results, the effective date and the letter distributions.
- F. Reconsideration appeals will be in accordance with this policy and initiated through the respective management and the Personnel Officer.

Effective: 3-02

ATTACHMENTS 3

CLASSIFICATION

- Attachment 3-A, Delegation of Classification Authority
- Attachment 3-B, Proposed Pay Project-Dept of Administration
- Attachment 3-C, Position Description (PD) Model Format
- Attachment 3-D, PD Model Format with Instructions

DELEGATION OF CLASSIFICATION AUTHORITY

TO: Nancy Keenan, Superintendent
Office of Public Instruction

FROM: Lois Menzies, Director
Department of Administration

DATE: July 8, 1996

SUBJECT: Classification Delegation, Compensation Project

On May 15, 1996 and again on May 21, 1996, I met with many of you to discuss a proposed project for reform of our classification and pay plan. Your response to the proposal was quite favorable or what one director characterized as "guarded enthusiasm."

Governor Racicot has approved the proposal. We are proceeding with initial research and development steps that are necessary to introduce legislative changes and conduct economic bargaining with employee unions. I have attached a one-page briefing summarizing the goals and objectives of the project.

One element of our proposal is to delegate position classification authority to agency directors. This delegation will free Department of Administration staff time to begin work on this project. We believe all directors should share equivalent authority for classification decisions and we are sending a delegation agreement to all department directors.

I have enclosed a delegation agreement for your review and signature. Please read this agreement carefully, sign, and return the original to Mark Cress at the State Personnel Division as soon as practical. We are making a significant shift in decision authority for the day-to-day management of the current classification process. The agreement does require that for any classification decision you make, an analysis by someone trained in classification must be performed. If you do not have the staff to perform this work, you can continue to submit requests to the Classification and Pay Bureau for review. They will provide an analysis and recommendation for you. We also suggest in the agreement that all agencies seek assistance on the classification of certain positions. This assistance can come from our analysts or from trained analysts from other agencies. Our classification staff will also be available to provide ongoing training and consultation for your staff as needed.

If you have questions about the compensation project or the delegation agreement, please call me (2032), Mark Cress (3879) or John McEwen (3894). We will do our best to keep you informed as work progresses.

DELEGATION OF CLASSIFICATION AUTHORITY LETTER OF AGREEMENT

This document specifies the responsibilities of the Office of Public Instruction, hereafter referred to as the agency; and the Department of Administration, hereafter referred to as the Department; as parties to an agreement by which the Department is delegating classification authority to the agency director.

Section 2-18-102(2) of the Montana Code Annotated authorizes the Department of Administration to delegate its classification authority to agencies, provided that such agencies remain in compliance with policies, procedures, timetables, and standards established by the Department.

Classification authority is hereby delegated to the agency director. Following are the criteria and procedures to be used for the delegation process:

- A. This authority will last indefinitely. The Department or the agency can terminate this agreement upon written notice.
- B. The agency director is authorized to decide and implement classification actions that classify positions into any class listed in Classification Manual: Volume I, Classification Inventory without prior review and approval from the Department. Each classification decision is made after review of an analysis and recommendation prepared by someone trained in the application of Classification Plan methods, standards, and procedures. In carrying out this authority, the agency is required to follow the classification rules, standards, methods, practices, and procedures of the Department which are contained in Classification Manuals: Volumes I, II, and III, and in the Montana Operations Manual: Volume III.
- C. The agency must submit documentation for those actions delegated to the agency in (B) to the Department. Documentation requirements are those specified in Classification Plan Rule 1720(1) (MOM III, 3-0401). Specifically, the agency must submit, in electronic form, a properly completed Position Description (PD) and Position Review Form (PRF) for each classification action. Instructions and guidelines for the PD and PRF are in the Classification Manual, Volume III, Classification Methods and Procedures. The Position Detail Form (PDF) necessary to record the classification action in the PPP system is submitted through the PPP on-line system.
- D. The agency must continue to abide by the provisions of the Classification Plan rules (MOM III, 3-0401) and the Pay Plan rules (MOM III, 3-0505) that have not been specifically modified by this agreement.
- E. This agreement does not modify the rights of an employee under the classification appeals procedures specified in 24.26.501 et seq., ARM. However, the agency is free to resolve an appeal at Step one of the grievance procedure set forth at 24.26.508(2), ARM, within the authority and procedures specified in this agreement.

- F. The Department will periodically conduct reviews of a sample of classification actions taken by the agency under the terms of this agreement to determine whether the agency is meeting the provisions of this agreement. These reviews will result in a report to the agency director on the extent to which the agency is complying with the agreement. The reviews will result in 1) recommendations for improvement and change in agency practices, 2) further required training for agency classification staff, 3) additional follow up reviews, or 4) removal and/or limitations on delegation authority.
- G. The agency, upon request, will receive from the Department assistance on specific classification actions and instruction and training on classification methods and practices.

This agreement is effective upon signatures of the parties.

Lois Menzies, Director
Department of Administration

Date

Nancy Keenan
Superintendent of Public Instruction

Date

PROPOSED PAY PROJECT
THE DEPARTMENT OF ADMINISTRATION

The Department of Administration is proposing to modify the state's Human Resource Systems so that consistent measures of individual contributions, qualifications and competency are used to support a range of personnel decisions. HR systems must be responsive to the rapidly changing, competitive environment within which state agencies currently operate.

The project will shift some emphasis from position duties and length of service to individual competency. Competencies include observable and measurable skills, knowledges, abilities, and behavioral attributes that are necessary for success of the employee and the agency.

Agencies need flexibility to appropriately compensate key contributors who through a combination of expertise, competence and the key importance of their jobs, are instrumental to the agency's success. One aspect of the project is a proposal to modifying the state classification and pay plan through "broad banding." Broad banding involves consolidating the 25 pay grades into a smaller number of pay bands, perhaps 8 or 10. Placement in a band will be determined by the position classification system. This will decrease the reliance on position classification and allow movement through a band based on other criteria such as competency.

Developing and implementing competency measures will take considerable work and time and will likely extend through the upcoming biennium. Salary increases for at least the first year of the new biennium will have to be structured in a manner similar to that used during the current biennium.

The project proposal also includes the delegation of classification authority to individual department directors. This delegation will allow the Department of Administration to free limited staff resources for development of competency guidelines and measures and to modify the current classification and pay systems. The department will continue to provide training and assistance to agencies and will participate in periodic audits of agency classification decisions.

The Department has developed ten proposed project goals based on a survey of agency managers.

- Reduce emphasis on position classification in setting pay.
- Give greater pay flexibility based on employee characteristics.
- Decrease effort and paper work to change job duties and pay.
- Reduce DoA's role in individual pay decisions.
- Keep pay structure market competitive.
- Progress employees in a predictable manner.
- Customize competency and performance criteria to specific occupations.
- Provide structure and training for managers.
- Automate information, decision and approval steps.
- Work cooperatively with unions to accomplish goals.

PD MODEL FORMAT**STATE OF MONTANA
OFFICE OF PUBLIC INSTRUCTION****POSITION DESCRIPTION****ALLOCATION: To be completed after final classification approval by the State Personnel Division or by agencies with delegated classification authority:**

Class Code	Title	Grade
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***** PART I: Identification *****

CURRENT CLASSIFICATION:	<u>Class Code:</u>	<u>Title:</u>
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AGENCY:	<u>Agency Code:</u> 5401	<u>Position No:</u>
----------------	--------------------------	---------------------

<u>Department</u>	<u>Division</u>
<u>Transportation</u>	

<u>Bureau</u>	<u>Section</u>	<u>Unit</u>
---------------	----------------	-------------

ADDRESS:

<u>Building & Street</u>	<u>Room Number</u>	<u>City</u>	<u>Zip Code</u>	<u>Business Telephone</u>
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FUNCTIONAL DESCRIPTION OF THE WORK UNIT:

***** PART II: Job Description *****

- ASSIGNED DUTIES:**
%

2. **WORKING CONDITIONS AND PHYSICAL DEMANDS:**

3. **KNOWLEDGE, SKILLS, AND ABILITIES:**

Education and Experience

4. **MANAGEMENT and SUPERVISION of OTHERS:**

<u>Pos. No.</u>	<u>Class Code</u>	<u>Title</u>	<u>FTE</u>
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Total organizationally subordinate FTE's:

5. **SUPERVISION RECEIVED:**

6. **SCOPE & EFFECT:**

7. **PERSONAL CONTACTS:**

*****PART III: Signatures *****

IMMEDIATE SUPERVISOR

To the best of my knowledge, the statements in Parts I and II are accurate and complete.

Signature _____

Date: _____

Name: _____
(Please Print)

Title: _____
(Please Print)

EMPLOYEE

To the best of my knowledge, the statements in Parts I and II are accurate and complete

Signature _____

Date: _____

Name: _____

Date: _____

ADMINISTRATIVE REVIEW

Signature _____

Date: _____

Name: _____
(Please Print)

Title: _____
(Please Print)

Signature _____

Date: _____

Name: _____
(Please Print)

Title: _____
(Please Print)

Agency Director
or Designee: _____

Date: _____

Name: _____
(Please Print)

Title: _____
(Please Print)

MODEL PD FORMAT WITH INSTRUCTIONS

**STATE OF MONTANA
OFFICE OF PUBLIC INSTRUCTION**

POSITION DESCRIPTION

ALLOCATION: To be completed after final classification approval by the State Personnel Division or by agencies with delegated classification authority:

Class Code	Title	Grade
_____	_____	_____

FILLED IN BY CLASSIFIER

***** PART I: Identification *****

CURRENT CLASSIFICATION: Class Code: (Get from current Title:
(current) p.d. or personnel)

AGENCY: OPI Agency Code: 3501 Position
No:

Department Division

Bureau Section Unit

ADDRESS:

<u>Building & Street</u>	<u>Room</u> <u>Number</u>	<u>City</u>	<u>Zip</u> <u>Code</u>	<u>Business</u> <u>Telephone</u>
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FUNCTIONAL DESCRIPTION OF THE WORK UNIT:

(Brief description of service/function of: Department/Division/Section/Unit)

***** PART II: Job Description *****

(Two or three sentences describing the reason for the position's existence)

1. ASSIGNED DUTIES:

%

(Describe major (essential) duties/responsibilities – no more than 7 duties most have 3-5; otherwise, consolidate. A duty can be either a single word or a complete statement. Put % of time spent performing each duty but do not break down by less than 10%.

Describe how duties are performed by task statements – what done, to whom/what, why, and how. This should describe the decisions and or skills that are involved in mental or physical operations. It should specify the application involved such as procedures, techniques, policies/laws/standards, theories and the nature of the work elements which must be handled to perform the work i.e., issues, data, facts, concepts, information, equipment.

Describe management or supervisory work as a duty.)

2. WORKING CONDITIONS AND PHYSICAL DEMANDS:

(Describe if travel is by auto, 1,000 mi./month averaged annually, other frequent travel, hazards, lifting, abnormal working hours or environment.)

3. KNOWLEDGE, SKILLS, AND ABILITIES:

(Describe necessary knowledge, skills, and behaviors and how this body of competencies is used.)

Education and Experience

Don't forget "Education and Experience" section. This describes the typical method of acquiring competencies. Include any necessary degrees, licensure, certification and registration.)

4. **MANAGEMENT and SUPERVISION of OTHERS:**

<u>Position No.</u>	<u>Class Code</u>	<u>Title</u>	<u>Grade</u>	<u>FTE</u>
---------------------	-------------------	--------------	--------------	------------

**(number of FTE in
the position i.e.,
1 or .5)**

(Also indicate the positions “indirectly” supervised – supervised by subordinates. Indicate the employee/employer relationship in a statement at the top of the list i.e., “line supervisor”: (signs performance appraisal and uses independent judgment in the interest of management); “leadworker”: (performs the same or similar level work of those directed, relays assignments from a higher level supervisor and does not sign performance appraisals); and “management”: (determines organization, operations, standards, policies, performance criteria, and supervises subordinate supervisors or other subordinates, implements corrective action/discipline, allocates resources, coordinates work unit programs with others, plans work methods and workflow, determines long-range goals) NOTE: THIS DEFINITION IS MEANT AS A GUIDE FOR DEFINING THE NATURE OF THE SUPERVISION AND IS NOT MEANT TO BE THE FINAL SUPERVISORY LEVEL, WHICH WILL BE DETERMINED BY A CLASSIFIER.

Total organizationally subordinate FTE's: (The total of the direct and indirect FTE supervised by this position)

5. **SUPERVISION RECEIVED:**

(Describe how work is assigned, priorities and methods determined; what guidance and procedures are provided; what assistance is received from others; how and when is work reviewed; what method is it reviewed i.e., by task or objective. Indicate what position is the immediate supervisor.)

6. **SCOPE & EFFECT:**

(What are the objectives of the work unit. How do the actions and decisions of the position directly impact their achievement and for which the position can be held accountable.)

7. **PERSONAL CONTACTS:**

(Indicate who, purpose and frequency of the contacts. Describe the nature of the contact i.e., conflict, negotiation, strategies, exchange of information.)

*****PART III: Signatures *****

IMMEDIATE SUPERVISOR

To the best of my knowledge, the statements in Parts I and II are accurate and complete.

Signature _____

Date: _____

Name: _____
(Please Print)

Title: _____
(Please Print)

EMPLOYEE

To the best of my knowledge, the statements in Parts I and II are accurate and complete

Signature _____

Date: _____

Name: _____
(Please Print)

Title: _____
(Please Print)

ADMINISTRATIVE REVIEW

Signature _____

Date: _____

Name: _____
(Please Print)

Title: _____
(Please Print)

Signature _____

Date: _____

Name: _____
(Please Print)

Title: _____
(Please Print)

Agency Director
or Designee: _____

Date: _____

Name: _____
(Please Print)

Title: _____
(Please Print)

4. DISABILITY, MATERNITY AND PARENTAL LEAVE AND MEDICAL CERTIFICATION

DEFINITIONS

Disability- any illness, injury, or other condition which prevents the employee from performing some or all of the duties of the position. A disability may be the result of a short-term illness or injury, pregnancy or childbirth, or an industrial accident. A disability also includes - a physical or mental impairment as these terms are defined in 49-2-101(19), MCA, and the definition of a person with a physical or mental disability found at ARM 24.9.801(3)

Industrial accident- an injury or disease to an employee which arises out of and occurs in the course of employment as set forth in 39-71-119, MCA.

Maternity leave- a leave of absence granted to or required of our employee because of such employee's disability due to pregnancy. It may be a paid or unpaid leave of absence.

Parental leave- a leave of absence granted to a birth father or adoptive parent up to 15 work days immediately following birth or adoption.

Reasonable accommodation- an adjustment made to a job, work environment, or both that enables an otherwise qualified person with a disability to perform the duties of the position, unless the accommodation would impose an undue hardship on the operation of the Office of Public Instruction programs.

Short-term illness or injury- a condition of limited duration, such as a cold, the flu, or a sprained ankle, which in and of itself does not limit employability.

DISABILITY LEAVE

Leaves of absence due to disability may include the approved use of sick leave, annual vacation leave, compensatory time, leave of absence without pay, other accrued paid leave or a combination of these leaves. Employees taking disability leave shall request such leave from their supervisor. The request must be in writing and must detail the reason the leave is needed and the anticipated duration of the leave. The supervisor may require the employee to produce evidence of the need for the leave of absence before the leave is granted or at any time during the leave.

When approving leaves of absence due to disability, the Office of Public Instruction may approve a combination of paid leave and leave of absence without pay in a workweek, for example, 20 hours of paid sick leave and 20 hours of leave of absence without pay. Requirements to self pay insurance premiums for an employee on leave of absence without pay due to a disability are found in the state employees health benefits plan document issued by the employee benefits section, State Personnel Division, Department of Administration. (NOTE: See benefits provided by a FMLA.)

MEDICAL CERTIFICATION

An employee who requests leave due to disability may be required to provide medical certification specifying that the disabling condition requires a leave of absence. Medical certification shall be obtained by the employee from a qualified physician. The medical certification shall identify the illness or condition, state that the employee is unable to work and estimate the date the employee will be able to return to work.

An employee who requests more than 6 calendar weeks of leave due to disability shall provide medical certification except under maternity leave. The Office of Public Instruction may require medical certification at any time before or during the leave and may require re-certification.

The Office of Public Instruction may require an employee who has been injured on the job to provide medical certification consistent with this rule for purposes of approving leave or continued employment. The Office of Public Instruction need not rely on medical certification provided by the Workers' Compensation Division when considering leave approval or continued employment.

At the end of a leave of absence due to disability, the Office of Public Instruction may require an employee to provide medical certification that the employee is fit to perform the duties of the position.

MATERNITY LEAVE

Maternity is considered to be a temporary disability. An employee may request leave for a pregnancy-related disability that occurs before the birth of a child. Leave must be requested and approved or disapproved consistent with the leave approval rule above.

Six (6) calendar weeks after the birth of a child shall be considered a reasonable period of recovery from a temporary disability resulting from childbirth. An employee shall not be required to obtain medical certification of a temporary disability for the initial six (6) calendar weeks of leave following the birth of a child. This period will be considered concurrent with FMLA leave. If the employee requests leave due to disability which exceeds six (6) calendar weeks, the employee shall obtain medical certification that the additional leave is necessary.

The Office of Public Instruction requires notification from the employee that the employee plans to take a leave of absence after the birth of the child. The notification must include the anticipated length and types of leave the employee plans to take. (See FMLA leave.)

Nothing in this rule prohibits an employee from voluntarily returning to work sooner than six (6) calendar weeks after the birth of a child. In such situations, the Office of Public Instruction may require the employee to provide medical certification that she is fit to perform her job duties.

PARENTAL LEAVE

Parental leave must be granted to any permanent employee who requests such a leave immediately following the birth of a child or adoption of a child for up to 15 working days. OPI may require documentation of the birth or adoption. An employee may use sick leave, annual leave, comp time leave or leave without pay for parental leave purposes. Requests for parental leave shall be made in writing and be given to the employee's immediate supervisor. The request must include the dates the leave will begin and end.

The Office of Public Instruction may approve a combination of paid leave and leave of absence without pay in a workweek, for example, 20 hours of paid annual leave and 20 hours of leave of absence without pay. Requirements to self pay insurance premiums for an employee on leave of absence without pay are found in the state employees health benefits plan document issued by the Employee Benefits Section, State Personnel Division, Department of Administration. (See FMLA for continuation of leave for this purpose. The full 12 weeks of FMLA leave will be available and applied concurrently with the 15 days of parental leave. Medical certification may be requested if sick leave is used after the initial 15 days. Medical certification does not apply to an adoptive parent or birth father.)

REASONABLE ACCOMMODATION OF EMPLOYEE DISABILITY

If a qualified person with a disability makes the disability known, , the Office of Public Instruction may provide reasonable accommodation to enable the employee to perform the duties of the position the employee holds provided the accommodation does not impose an undue hardship for OPI.

If an employee's disability becomes known, and an accommodation is requested, the written request must include an explanation of the disabling condition and a description of the accommodation requested in order to perform the essential functions of the position the employee holds. The Office of Public Instruction may request verification of the disabling

condition and functional limitations from a qualified physician, rehabilitation counselor or certified professional at any time.

Effective:

Revision Effective: 3-02

ATTACHMENTS 4

DISABILITY, MATERNITY AND PARENTAL LEAVE AND MEDICAL CERTIFICATION

- Attachment 4-A, ADA Request Accommodation Form

OPI/State of Montana

REQUEST FOR ACCOMMODATION

NOTICE: Please type or print and return to the supervisor or personnel officer. Request assistance from the agency personnel office if needed to complete form. All information received by agency personnel pertaining to your request for a reasonable accommodation is kept confidential. Information obtained or generated in the processing of this request may be released to individuals or agencies participating in evaluation or provision of this accommodation. This information is maintained separate from personnel records.

Employee/Applicant's name: _____
(Last) (First) (Middle Initial)

Employee/Applicant's SSN: _____

Home address: _____

Daytime phone: _____(work) _____(home)

Department/Division/Bureau: _____

Job title: _____

Name of supervisor: _____

Accommodation(s) requested:

Reason(s) for needing an accommodation:

Signature: _____ Date: _____
(Applicant or Employee)

For Agency Use Only

Person receiving request _____ Date: _____
(name and title)

5. DISCIPLINE

DEFINITIONS

Corrective counseling- informal procedure involving constructive corrective actions taken to improve unsatisfactory employee behavior in a positive, non-threatening manner prior to or during the administration of formal disciplinary action. The actions may include, but are not limited to, coaching or counseling meetings, and training.

Management- the employee's immediate supervisor and other supervisors in a direct line of authority above the employee's supervisor. Immediate supervisor refers to the first level of supervision not included in the bargaining unit.

Progressive discipline- a process of applying disciplinary actions which may progress from less serious actions to more serious actions based upon the severity of the performance deficiency, or the repeated nature or on a pattern of misconduct or poor performance. Progressive discipline may range from corrective counseling to discharge.

Formal disciplinary action- a written warning, suspension without pay, disciplinary demotion, discharge or similar disciplinary action which adversely affects the employee. It does not include corrective counseling or oral warnings which are informal actions. All formal disciplinary actions must be noticed in writing.

Informal disciplinary action- corrective counseling or oral warning.

Documentation- a record of facts, incidents or other materials used as evidence to support the administration of a disciplinary action. Formal documentation includes documents which are management's record of disciplinary action, which are presented to and reviewed with the employee, then signed by the employee with a copy being put in the employee's personnel file and a signed copy given to the employee. "Informal documentation" is an account made at the time of discipline related occurrences and what has been done about them. No documentation should be made on anything that has not or will not be discussed with the employee. "Informal documentation" provides the foundation for "formal documentation" and becomes evidence, which becomes part of the record.

Just cause- reasonable, job-related grounds for taking a disciplinary action based on failure to satisfactorily perform job duties or disruption of agency operations. Just cause includes, but is not limited to, an actual violation of an established agency standard, legitimate order, policy, or labor agreement, failure to meet applicable professional standards or a series of lesser violations if the employee would reasonably be expected to have knowledge that the action or omission may result in a disciplinary action.

Due process- ensuring an employee:

- (a) is informed of the action being taken and the reason for it; and
- (b) has an opportunity to respond to and question the action and to defend or explain the questioned behavior or actions. This includes both a response to the notice verbally, in

writing, or both before discharge and the right to grieve the disciplinary action following discharge.

Written warning- a written disciplinary notice intended to notify an employee of unsatisfactory performance or behavior that disrupts agency operations and to communicate management's expectations to the employee. It includes dates and duration of the performance or behavior deficiencies as well as dates pertaining to corrective expectations and a warning of the consequences of failure to make required improvements or corrections. It also gives notice of the employee's right to grieve the disciplinary action and the right to respond to the notice verbally, in writing, or both.

Suspension without pay- a leave of absence without pay ordered by management, which requires an employee to remain off the job for just cause. NOTE: Exempt employees should not be suspended for less than a workweek—except in the case of a major safety violation—to preserve exempt status according to the Fair Labor Standards Act.

Disciplinary demotion- reclassification of an employee's position to a lower grade or assignment of an employee to another position at a lower grade for just cause. A disciplinary demotion must include a reduction in position duties corresponding with the new position title and/or grade.

Discharge- for purposes of this policy, the termination of an employee's employment for just cause.

Employee- an employee in a permanent position who has attained permanent status. It does not mean an employee in a permanent position who has not attained permanent status, or an employee in a temporary position.

Privacy- Disciplinary action is an area of individual privacy which is extended to disciplinary records, disciplinary conferences with the employee, and oral information about the action.

INFORMAL DISCIPLINARY ACTIONS

Corrective counseling and oral warnings are informal actions which may be used at the option of management prior to or in addition to formal discipline to deal with continuing performance deficiencies or misconduct. In an oral warning procedure, it should be made clear to the employee that it is a disciplinary action. These actions are not part of formal discipline and are not grievable. Documentation is encouraged, but is not required.

FORMAL DISCIPLINARY ACTION

When formal disciplinary action is necessary, just cause, due process and documentation of facts are required. Formal disciplinary actions include, but are not limited to, written warning, suspension without pay, disciplinary demotion and discharge.

The Weingarten decision provides that an employee who is a union member has the right to have a union representative present in an investigatory interview when an employee reasonably believes the interview may result in a formal disciplinary action. The right does not apply if OPI has already decided on disciplinary action and the interview is only to inform the employee of the action.

Management shall, when appropriate, use progressive discipline. However, the appropriateness of using progressive discipline in each case lies within the discretion of management. The specific disciplinary actions taken and the order in which disciplinary actions are taken depend on the nature and severity of the performance deficiency or behavior that disrupts agency operations. Discharge should not be an initial disciplinary action except in severe cases of unsatisfactory performance or behavior that disrupts agency operations. In cases where discharge is being considered, suspension with or without pay may be more appropriate until a pre-termination review can be conducted and reasonable grounds are substantiated for discharge. Pay and benefits will be paid for the period of suspension if a further investigation exonerates the employee.

Each formal disciplinary action shall include a written notification to the employee which includes, but is not limited to, the following:

- the just cause for the disciplinary action;
- the disciplinary action to be taken, including dates and duration where applicable;
- the improvements or corrections expected, the time frame allowed to accomplish them and the consequences of failure to make the required improvements or corrections.

The employee shall be offered the opportunity to review, sign and date any notice of a formal disciplinary action and shall have the opportunity for verbal and/or written response. The employee's signature indicates that the employee has had the opportunity for review, but not necessarily that the employee agrees with the action. If the employee refuses to sign, a witness to such refusal, in addition to the supervisor, shall sign and date the notice.

Where notices of disciplinary action cannot be issued in person, they should be delivered by certified mail.

All formal disciplinary actions must be documented and all relevant dates included for both the periods of time of the misconduct or performance and period of time allowed for improvement or correction. Documentation of formal disciplinary action will be kept in the OPI Personnel office.

The OPI Grievance Policy and Procedure is to be given to the employee when any formal disciplinary action is taken.

All disciplinary documentation, oral information, and conferences with and regarding the employee are confidential and considered an area of individual privacy according to the Montana

constitution. Disciplinary action is not to be discussed in connection with the employee's name with anyone other than with those who have a need or right to know such as union representative, supervisors or managers in chain of command, and the Personnel Officer.

Effective:

Revision Effective: 3-02

6. DRUG-FREE WORKPLACE

The Office of the Montana Superintendent of Public Instruction is committed to a drug-free workplace. The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in the workplace by any employee of this agency is prohibited.

An employee who violates this prohibition is subject to disciplinary action, up to and including discharge, as provided in the Discipline Handling Policy, ARM 2.21.6505 et seq. and the OPI Discipline Policy.

Employees will be made aware of any drug-free awareness programs offered by this agency or the Department of Administration. Drug counseling and rehabilitation may be covered by the Employee Group Benefits Plan. The Agency personnel office is the contact for further information on a specific coverage.

In compliance with the Drug-Free Workplace Act of 1988, an employee will:

1. Abide by the terms of the state's policy statement requiring a drug-free workplace; and
2. Notify the agency of any conviction of a criminal drug statute which is the result of a violation which occurred in the workplace. The agency must be notified no later than five days after the conviction.

The office shall take one of the following actions within 30 days of receiving notice of a conviction from an employee.

1. Take appropriate disciplinary action against the employee, up to and including discharge;
- or
2. Require such employee to participate satisfactorily in an approved drug abuse assistance or rehabilitation program.

Effective: 4/18/89

Revision Effective: 12/01

7. EDUCATION AND TRAINING ASSISTANCE

Employees of the Office of Public Instruction may request education and training assistance. The granting and extent of education and training assistance including leave and/or partial payment of expenses is at the Superintendent's discretion. Education and training leave and payment of expenses shall be based on an analysis of costs and benefits to the Office of Public Instruction.

An employee may be placed on education and training leave with pay or leave without pay, or a combination, at the discretion of the Superintendent. When the training is work related, an employee may be placed on leave with pay for education and training purposes. In such instances, the employee shall receive the same benefits as other employees on leave with pay. An employee on leave without pay for education and training purposes shall receive the same benefits as other employees on leave without pay. An employee who needs to be in training part-time may be allowed to work some hours and be placed on leave with pay, leave without pay or a combination during training hours. The Superintendent may, at her discretion, deny any education or training assistance.

At the discretion of the Superintendent, the Office of Public Instruction may enter into a written agreement with an employee whereby the agency agrees to pay up to 50% of the education expenses of the employee's education or training up to a maximum of \$1500 per year. Education expenses may include tuition, fees, and the cost of course books and materials. It does not include travel, lodging, or other expenses incurred in the course of study. Payment of expenses is conditioned upon successful completion of course work with a passing grade of C or better. Payment will be made in two parts – half at registration and half at successful course completion. Education and Training Assistance Agreements are renewable by the Superintendent on an annual basis.

The employee must agree to continue employment with the Office of Public Instruction for at least one year following the completion of the last course reimbursed by the agency. If the employee terminates their employment before one year is complete, they must reimburse the OPI for the cost of the previous year's course work on a pro-rated basis. For example, if the employee leaves six months after completion of the last course, the OPI will be reimbursed for 6/12 or $\frac{1}{2}$ the amount paid for education expenses incurred in the previous twelve months. Payment is due upon termination.

Any employee wishing to receive education or training assistance must submit a written proposal to the Superintendent. The proposal should include:

- *A description of the training requested
- *Dates and times for leave requested
- *How the training will benefit the Agency
- *Direct costs requested to be reimbursed by the Office of Public Instruction
- *Projection of indirect costs such as costs of hiring temporary replacements or compensatory time for current employees.

Leave or expenses granted for education or training not required by management should be in proportion to the anticipated benefits to the agency.

The Superintendent shall assess requests for education and training assistance on a cost/benefit analysis which weighs both direct and indirect costs against the benefits to the Office of Public Instruction. Benefits to consider when assessing requests for education and training leave and payment of expenses include, but are not limited to:

- *Whether the education or training is necessary to enable the employee to meet agency expectations in accomplishing performance objectives;
- *How likely it is the education or training will improve the employee's job performance;
- *How likely it is the education or training will improve performance of potential job duties;
- *To what degree the education or training will contribute to meeting current and future agency goals and objectives.

Costs to consider when assessing requests for education and training leave and payment of expenses include, but are not limited to:

- *Actual costs of the education or training, including tuition, fees, transportation, per diem, and subsistence allowance, if any;
- *Costs in time lost by the employee, including loss of the employee's productivity, and other costs such as overtime or compensatory time for other employees and/or the costs of hiring a temporary replacement;
- *Impact on the Office of Public Instruction budget.

Consideration should be given to potential future inequities that may result between employees of current equal status when education and training is provided to some, but not all, similarly situated employees.

When management requires an employee to attend training as a condition of employment, completion of an Education and Training Assistance Agreement is not necessary. In the case of required education or training, the agency shall pay all appropriate costs, including:

- *Regular salary while on leave and overtime or compensatory time where appropriate
- *All tuition and fees
- *Transportation and per diem where appropriate

The requirement to pay all costs of training does not extend to courses required for professional certification. However, costs may be paid where funds are available and the content of a specific course is sufficiently job-related that management determines the course should be required as a condition of employment.

Effective: 5/2/01

ATTACHMENTS 7

EDUCATION AND TRAINING ASSISTANCE

- Attachment 7-A, Model Agreement
- Attachment 7-B, Expense Reimbursement Form

OPI EDUCATION AND TRAINING ASSISTANCE AGREEMENT FOR NAME

Pursuant to the Office of Public Instruction's Education and Training Leave Assistance Policy, the following agreement between the Office of Public Instruction (OPI) and **NAME** outlines the mutual commitments between OPI and **NAME**. The purpose of this agreement is to assist **NAME** in her/his pursuit of continuing formal education directed toward acquiring skills and knowledge that will contribute to his/her professional growth and development. It is offered to **NAME** as an incentive to continue her/his employment with OPI.

REQUIREMENTS:

- Any educational institutions attended must be accredited and acceptable to OPI.
- Course work must lead to a undergraduate degree in a field related to **NAME**'s present position or which will help prepare her/him for more responsibility in a position at OPI. The division administrator must approve exceptions to this requirement in writing.
- The course of study is planned and leads to the undergraduate degree with the minimum of courses.
- **NAME** performs satisfactorily in her/his job, working on average 40 hours a week. Time spent attending class will not be considered work time.
- This agreement will be in effect for one year from date of signature. It is renewable with the approval of the OPI authorizing parties.

REIMBURSEMENT

- OPI will pay for half of **NAME**'s education expense up to a limit of \$1500 per year. Education expense covers tuition, fees, and cost of books in connection with courses. It does not cover travel, lodging, or other expenses incurred in the course of study.
- A passing grade (C or better) must be received or OPI will be reimbursed for its share of the cost of the course within two weeks following the end of the course.
- OPI will pay one-quarter at the beginning of the course and one-quarter at the end of the course. Payments will be made to **NAME** upon proof of registration and course completion.
- **NAME** continues her/his employment with OPI for at least one year after completion of the last course reimbursed by OPI. If **NAME** terminates her/his employment with OPI before one year is complete, she/he will reimburse OPI for the cost of the previous year's course work on a prorated basis. For example, if she/he leaves six months after the last course, she/he will pay 6/12 or 1/2 the amount OPI paid to her/him for educational expenses incurred in the previous 12 months. Payment is due upon termination.

TAXABILITY OF REIMBURSEMENTS:

OPI does not withhold Federal, state, or local wage taxes from amounts reimbursed under this agreement, nor will such reimbursements be reflected in the participant's annual Wage and Tax Statement (W-2).

Deputy Supt.	Date	Assistant Superintendent	Date
Division Administrator	Date	NAME , Employee	Date

OPI EDUCATION EXPENSE REIMBURSEMENT FORM

This form records the information for education expense reimbursement. The final grade is recorded at the end of the course and supported by a copy of your official grade report.

Date: _____

Name: _____

Institution: _____

For Semester: _____

COURSE, FEE, AND BOOK DESCRIPTION	CREDITS	FINAL GRADE	COST
Courses:			
Books and Fees:			
TOTAL :			

REIMBURSEMENT	AMOUNT	DATE
OPI's first _ payment		
OPI's second _ payment		
TOTAL :		

Employee: _____

Date: _____

Approved by: _____

Date: _____

Budget: _____

8. EMPLOYEE RECOGNITION AND INCENTIVE AWARDS

(Draft policy forthcoming)

Effective:

ATTACHMENTS 8

EMPLOYEE RECOGNITION AND INCENTIVE AWARDS

- Attachment 8-A, Incentive Awards Program and Procedure
- Attachment 8-B, Incentive Awards Nomination Form

OFFICE OF PUBLIC INSTRUCTION
Incentive Award Program and Procedure

Purpose: The purpose of this program is to implement the statewide employee incentive award policy within the Office of Public Instruction.

- I. Program description
- II. Definitions
- III. Program coordinator responsibilities
- IV. Process to track ideas and suggestions; procedure to nominate individuals, groups or teams for awards
- V. Evaluation and prioritization of nominations for awards
- VI. Presentation of awards
- VII. Closing

I. PROGRAM DESCRIPTION

The Statewide Employee Incentive Award Program was created by the November 1993 special session of the Legislature.

The program rewards outcomes and achievements, which can be documented, rather than ideas or suggestions for future improvements to agency operations. An idea or suggestion becomes eligible to be nominated for an award when it is implemented or when documented achievements and outcomes can be determined. Recognition also is possible for improving the effectiveness of state government or improving services to the public by permitting more work to be accomplished within an agency without increasing the cost of operations.

The Superintendent of Public Instruction grants incentive awards for the Office of Public Instruction and determines their monetary value.

Nominations for awards may come from current employees, employees of other state agencies and from non-employees. Individual employees, groups or teams of employees and non-employees all may be eligible to be nominated for awards.

The Superintendent may approve an award of up to \$500 or up to 40 hours of paid leave as an award for an action which benefits the agency but a documented value cannot be calculated.

The Superintendent may approve an award of up to \$17,000 for an achievement or outcome with a documented value.

II. DEFINITIONS

1. "Employee" means, as defined in 2-18-1101, MCA, "any employee of the executive, legislative, or judicial branch or the Montana University System."
2. "Group or team of employees" means, as defined in 2-18-1101, MCA, "a group, team or work unit of employees working cooperatively."

III. PROGRAM COORDINATOR RESPONSIBILITIES

1. Personnel Officer is the Office of Public Instruction Employee Incentive Award Program coordinator.
2. The program coordinator is responsible for the following:
 - A. Receiving ideas and suggestions.
 - B. Notifying submitter of the status of proposals.
 - C. Maintaining a tracking system for nominations for awards.
 - D. Chairing a standing committee to evaluate and prioritize nominations for awards.
 - E. Promoting the program within the office.
 - F. Arranging presentation ceremonies, including obtaining monetary awards.
 - G. Publicizing awards to the employees and the media.
 - H. Preparing the annual report of activity for the Department of Administration.
 - I. Making or arranging a reasonable accommodation to participate in the program, if one is requested.
 - J. Any other duty assigned by the Superintendent.

IV. PROCESS TO TRACK SUGGESTIONS OR IDEAS; PROCEDURE TO NOMINATE INDIVIDUALS, GROUPS OR TEAMS FOR AWARDS

1. Office of Public Instruction employees, employees of other state agencies and non-employees may submit ideas or suggestions which could contribute to the efficiency, economy or other improvement of state government. Implementation of these ideas or suggestions is part of the ongoing process of managing the office. The name of the person or persons submitting the idea or suggestion and the date submitted will be recorded.
2. A nomination for an incentive award may be submitted on a form available from Program Coordinator or in another written format.
3. Individuals, groups or teams of employees, other state employees and non-employees may submit nominations for awards for consideration to the program coordinator.

THE NOMINATION MUST INCLUDE THE FOLLOWING INFORMATION TO BE CONSIDERED. INCOMPLETE SUBMISSIONS WILL BE RETURNED. QUESTIONS ABOUT THIS PROCESS SHOULD BE DIRECTED TO THE PROGRAM COORDINATOR:

- A. Name, address, telephone number of person(s) submitting the nomination for an incentive award.
- B. Name(s) of individual or group or team of employees nominated, if applicable.
- C. A description of how the outcome, achievement or savings:
 - 1) Exceeds normal expectations for the employee, or group or team of employees, or
 - 2) Has an impact on the delivery of service to the public or other customer, or
 - 3) Directly and to what degree contributes to the office objectives, goals and mission.
- D. The dollar value of the documented savings, including the method used to determine the value.
- E. Signature of the submitter(s) and the date submitted. The Office of Public Instruction will date stamp each nomination which will become the official receipt date of the nomination. The Office of Public Instruction will notify the submitter that the nomination has been received. The Office of Public Instruction may request additional information from the submitter in order to evaluate the nomination.
- F. All nominations for incentive awards are public information available for review.

V. EVALUATION AND PRIORITIZATION OF NOMINATIONS FOR AWARDS

- 1. The Superintendent makes the final decision to grant an incentive award.
- 2. The Superintendent will appoint five members to a standing committee and name a chairperson. Committee members serve at the pleasure of the Superintendent. The committee will conduct the initial evaluation and prioritization of nominations for incentive awards. If the committee determines the nomination is applicable to the office, the committee will make non-binding recommendations to the director concerning:
 - A. Approval or disapproval of a nomination for an award, and
 - B. An appropriate monetary or leave award.
- 3. The committee will use the following criteria to evaluate and prioritize nominations:

Compare the outcome, accomplishment or savings to what is normally expected from the employee, group or team of employees through the duties and responsibilities of their positions.

- Those outcomes, accomplishments or savings that exceed expectations by the greatest degree should be given priority for awards.

For example: Some positions are responsible for managing costs either through audit functions, fund management or through management of benefit or claims payments. Cost avoidance may be an integral part of their duties. There is likely an expectation that the normal completion of duties and responsibilities should result in a certain level of cost savings or cost avoidance.

- When cost savings or cost avoidance result from the expected performance of regular duties, outcomes should not be given priority for awards.

- If cost savings or cost avoidance results from activities that:

- * are highly original or creative, involving innovative or novel approaches developed by members of the group or team;
- * significantly exceed the level of effort or diligence normally expected from the employee's positions;
- * require cooperative work efforts possible only through initiatives of group or team members that go above and beyond what is normally expected through existing work structure or organization;

then resulting outcomes, achievements or cost savings should be given priority for award.

Evaluate the impact of the outcome, accomplishment or savings on delivery of service to the public or other customer.

- Outcomes, accomplishments or savings having the greatest impact on the well being of the office customer group should be given the highest priority for award.

Evaluate the outcome, accomplishment or savings in terms of how directly and to what degree they contribute to OPI objectives, goals and mission.

- Outcomes, accomplishments or savings making the greatest contribution toward OPI's stated objectives, goals and mission should be given the highest priority for award.

When evaluating a suggestion, invention or idea, consider:

- Is the suggestion, idea or invention original? Is it highly innovative, representing a significant departure from previous approaches or ideas or is it a minor modification to an existing approach?

- Has the suggestion, idea or invention been fully implemented? To what degree did it require modification or further development before it could be successfully implemented?
- How important was the suggestion, idea or invention in contributing to the outcome, accomplishment or cost savings? Did it allow a minor improvement in an outcome that would have occurred without the suggestion, idea or invention, or did it provide the principal impetus or mechanism for an outcome that would not have occurred without the suggestion, idea or invention?

4. Two types of incentive awards are available.

- A. The first is an award for an achievement or outcome that does not result in cost savings that can be specifically determined a year after the achievement or outcome is implemented and the cost savings actually incurred. In this case, the Superintendent may award a maximum of \$500 per employee or non-employee or not more than 40 hours of paid leave time for an employee. Larger awards may be proposed and submitted to the legislature for consideration.
 - B. The second is an award for an achievement or outcome producing cost savings that can be measured after the savings are actually incurred. The Superintendent may grant an award which may not exceed:
 - 1) 10% of the first \$100,000 of cost savings actually incurred during the 12 months following implementation of the suggestions; plus
 - 2) 5% of the next \$100,000 of cost savings actually incurred during that 12-month period; plus
 - 3) 2% of the next \$100,000 of cost savings actually incurred during that 12-month period.
5. If the award is to be divided between two or more persons, the Superintendent determines the amount each person is to receive.
6. The committee may request additional assistance from other department staff, other state employees, and/or any person or group able to provide information necessary to make an informed recommendation.
7. The committee will meet as nominations are received, but no more than once a month. Minutes of the meetings will be kept.
8. The committee will document in writing the evaluation and priority for award which is recommended.
9. If the committee determines the nomination is not applicable to the office, the committee may:

- A. Return the nomination to the submitter with that explanation, or
 - B. After consultation with the program coordinator in another agency to which the nomination may apply, refer the nomination to the new agency and notify the submitter of that action.
10. If the committee determines the nomination may be applicable in other agencies, the committee may contact the program coordinator(s) to determine if additional agencies would benefit from the nomination and will participate in funding the award.

VI. PRESENTATION OF AWARDS

- 1. The Superintendent will make the final decision regarding the adoption of an incentive award and the amount of the award.
- 2. The incentive award review committee will compile its evaluations and priority recommendations for awards for the agency head no later than March 1 and September 1.
- 3. The maximum number of adopted incentive awards in a fiscal year for the Office of Public Instruction is 26.
- 4. Incentive awards will be presented in April and October.
- 5. The list of awards required by 2-18-1106, MCA, will be prepared by (the program coordinator or committee chairperson) and will be provided to the Department of Administration on the format prescribed by the department within 30 days of the end of each fiscal year.

VII. CLOSING

- 1. The Office of Public Instruction will make reasonable accommodation for persons with disabilities who wish to participate in the Statewide Employee Incentive Award Program. To request an accommodation, contact (program coordinator, address, telephone, and TDD and FAX numbers).

Effective: 2/3/00

OFFICE OF PUBLIC INSTRUCTION INCENTIVE AWARD NOMINATION FORM

The nomination must include the following information to be considered. Incomplete submissions will be returned. Questions about this process and nominations should be directed to Kathy Bramer. Please type or print clearly.

The Office of Public Instruction will make reasonable accommodation for persons with disabilities who wish to participate in the Incentive Award Program. To request an accommodation, contact Kathy Bramer, Office of Public Instruction, PO Box 202501, Helena, MT 59620-2501, 444-2562, FAX 444-1369, TDD 444-1812.

All nominations for incentive awards are public information and available for review.

[illegible]

9. EQUAL EMPLOYMENT OPPORTUNITY – NONDISCRIMINATION

It is the policy of the Office of Public Instruction to provide equal employment opportunity to all individuals. The Office of Public Instruction does not discriminate on the basis of an individual's race, color, religion, creed, sex, sexual orientation, national origin, age, handicap, marital status, or political belief with the exception of special programs provided by law.

The Office of Public Instruction will take affirmative action to equalize employment opportunities at all levels of agency operations where there is evidence that there have been barriers to employment for those classes of people who have traditionally been denied equal employment opportunity.

The Office of Public Instruction is committed to providing reasonable accommodation to any known disability that may interfere with a disabled applicant's ability to compete in the selection process or a disabled employee's ability to perform the duties of a job.

The Office of Public Instruction will not retaliate against any employee for lawfully opposing any discriminatory practice, including the filing of an internal grievance, the filing of a union grievance, the initiation of an external administrative or legal proceeding or testifying in or participating in any of the above.

The designated Equal Employment Opportunity Officer for the Office of Public Instruction is the Personnel Officer. The Personnel Officer attempts to resolve complaints of discrimination. The Personnel Officer is also responsible for implementation of measures designed to remediate the effects of demonstrable past discrimination within the Office of Public Instruction. An American with Disabilities Act (ADA) Coordinator is appointed to supplement the administration of provisions for the disabled.

The Office of Public Instruction cooperates with the State of Montana Personnel Division in determining appropriate affirmative action plan items. A statement assigning responsibility for coordinating the agency affirmative action program and for attempting to resolve employee EEO complaints to a designated EEO officer and assigning responsibility for implementing affirmative action program to all agency managers and supervisors shall be posted in each work location.

To report a complaint of discrimination as described in this policy, use the EEO-Nondiscrimination Complaint Resolution Procedure in Attachment 9-A or contact the OPI Personnel Office.

Effective:

Revision Effective: 3-02

ATTACHMENTS 9

EEO – NONDISCRIMINATION

- Attachment 9-A, Complaint Resolution Procedure

OPI
EQUAL EMPLOYMENT OPPORTUNITY – NONDISCRIMINATION
COMPLAINT RESOLUTION PROCEDURE

The Office of Public Instruction (OPI) is an equal employment opportunity employer and prohibits discrimination based on race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation or political beliefs unless based on a bona fide occupational qualification (BFOQ). The State also prohibits discrimination in providing services, activities and programs unless providing a reasonable accommodation or reasonable modification would cause an undue hardship.

The OPI is committed to resolving complaints of discrimination in a fair and timely manner. The complaint resolution procedure is a dispute resolution process used when an applicant, client, customer or employee alleges that discrimination has taken place. Management must investigate when reports are received. Complaints concerning disability discrimination are submitted to the agency Americans with Disabilities Act (ADA) Coordinator. All other complaints are submitted to the agency Equal Employment Opportunity (EEO) Officer.

Complainant's Responsibility:

Any applicant, client, customer, or employee who believes he or she or another person has been subjected to a discrimination of the equal employment opportunity policy is encouraged to report the incident(s) or action(s) to management as soon as possible after the alleged discrimination occurs. Early reporting is encouraged, because management's ability to investigate and act on reports diminishes with time.

Management's Responsibility

- (1) Any supervisor who receives a report of an alleged discrimination shall immediately notify the agency EEO Officer or ADA Coordinator.
- (2) Upon receipt of a report alleging discrimination, including sexual harassment, the agency shall take all appropriate steps to prevent the alleged conduct from continuing pending completion of the investigation. The agency will determine the steps to be taken by balancing the rights of the alleged victim, including the severity of the alleged conduct, and the rights of the alleged harasser.
- (3) The EEO Officer or ADA Coordinator shall initiate an investigation or select another appropriate management representative to initiate the investigation no later than 10 working days after receiving notice of the alleged discrimination. The investigation shall include verification of the report, a recommended course of action, and written documentation of the investigation. The investigator shall submit the results of the investigation to department or agency Personnel Officer. The factual report shall remain confidential and may not be disseminated except to persons having a need or right to know which outweighs the privacy rights of the persons involved.
- (4) Within 5 working days of receiving the investigator's factual report, the agency will, in writing, inform the complainant, any employees directly involved, their immediate

supervisors, and the EEO Officer or ADA Coordinator of the results of the investigation and the agency's decision.

- (5) If the investigation establishes that there is insufficient evidence to find that illegal discrimination occurred, the agency will inform all parties involved that no action will be taken. If the investigation establishes that discrimination occurred, the agency will take appropriate action, including, but not limited to, disciplinary measures pursuant to the agency's disciplinary policy, which may include termination. The agency will, in writing, inform the complainant only that an action was taken, not the details of the action.
- (6) Neither the agency management nor any employee will retaliate against any employee for filing a discrimination complaint or for participating in any way in a complaint procedure.

OTHER COMPLAINT FILING OPTION (1) An applicant, client, customer, or employee may concurrently file a complaint of unlawful discrimination with the Human Rights Bureau (PO Box 1728, Helena, MT 59624-1728, phone 1-800-542-0807.) The complaint must be filed either:

- (a) within 180 days of the alleged incident; or
- (b) if the employee initiates action to resolve the alleged discrimination in accordance with this procedure or contract grievance procedure, within 300 days of the alleged incident.

10. EQUALITY OF OPPORTUNITY FOR STUDENTS

It is the position of the Office of Public Instruction that all personnel should demonstrate respect for the dignity of all students. All individuals should be given equal opportunity regardless of gender, race, national origin, age, marital status, religion, sexual orientation, disability, political ideas or social condition or other artificial barrier which causes opportunity limiting discrimination.

Effective:

Revision Effective: 3/02

11. ETHICS: CONSULTING AND CONTRACTING

Consulting and contracting by Office of Public Instruction employees is permitted except where the contract or consulting agreement results in a conflict of interest or a violation of statute or rule, see 2-2-201, MCA.

Office of Public Instruction employees may not use state time, facilities or equipment for private business purposes. Employees may not engage in substantial financial transactions with individuals they inspect or supervise in the course of duties of their job with the Office of Public Instruction. Employees may not charge a fee or any other form of compensation for obtaining services from the Office of Public Instruction. Employees may not perform an official act which results in economic benefit to any business in which the employee holds a substantial financial interest.

Office of Public Instruction employees may not contract with the Office of Public Instruction.

If an employee receives reimbursement for services provided in the course of his or her employment with the Office of Public Instruction, the payment will be turned over to the Office of Public Instruction. (For further direction, see ETHICS Standards of Conduct for State Employees by the Department of Administration, State Personnel.)

Effective:

Revision Effective: 3-02

12. EXEMPT COMPENSATORY TIME

DEFINITIONS

Exempt compensatory time – time accrued on an hour-for-hour basis for time in a pay status in excess of 8 hours per day or 40 hours in a workweek. Accrued time may be taken as approved paid time off at a later date.

Exempt employee – an employee in a position designated as executive, administrative, or professional, which is not subject to the overtime pay provisions of the federal FLSA and its regulations.

EXEMPT COMPENSATORY TIME

All hours in a pay status shall be counted as hours worked for purposes of calculating exempt compensatory time earned. Absent time in a pay status, including holidays paid leaves, and exempt compensatory time taken off is counted as hours worked.

Exempt compensatory time shall be earned, recorded, and used in no less than one-half hour increments. Hours worked in excess of 8 hours per day or 40 in a workweek shall be reported on a time and attendance form, as prescribed by the agency, to be accrued as exempt compensatory time. Supervisors may require employees receive prior approval to accrue compensatory time.

Accrued exempt compensatory time may be used as paid leave by the employee at a mutually agreeable later date during the employee's regular working hours, if the use of the compensatory time does not unduly disrupt the operations of the Office of Public Instruction. Where the interest of the Office of Public Instruction requires the employee's attendance, the Office of Public Instruction's interest overrides the employee's interest to take exempt compensatory time off. The Office of Public Instruction may require an exempt employee to take accrued exempt compensatory time during any workweek.

The Office of Public Instruction may, at any time, prohibit the accumulation of exempt compensatory time. A maximum of 120 hours of exempt compensatory time may be carried over from one calendar year to the next. A determination of excess exempt compensatory time will be made as of the end of the first pay period which extends into the next calendar year. The employee must take off all excess compensatory time during the first 90 days of the next calendar year or forfeit the excess hours.

The Superintendent may approve an exception to the forfeiture requirement provided in the paragraph above except as prohibited by the OPI/MPEA collective bargaining agreement. Such an exception may be approved to deal with special and unique circumstances which represent periodic or temporary situations that cannot be adequately addressed by other management actions. When an exception to the forfeiture requirement is approved in advance by the Superintendent, the employee shall not forfeit excess exempt compensatory time hours during the next calendar year. At the end of that year, a new determination of excess exempt compensatory time hours shall be made.

The Office of Public Instruction is under no obligation to extend an employee's termination date to allow an exempt employee to take off accrued exempt compensatory time upon termination or to pay out properly classified FLSA exempt compensatory time in excess of 120 hours. The Superintendent may approve the use of exempt compensatory time to extend an employee's termination date up to a maximum of 120 hours. Such extension may be approved when the Superintendent determines that:

Compensatory time was accrued upon management's request in order to complete projects or meet objectives, or

The employee has been denied reasonable opportunity to use accrued exempt compensatory time.

Except in the case of termination, it is not the intent of this policy to provide any compensation in addition to an employee's regular salary. Exempt compensatory time may not be cashed out for any employee except at termination as provided in the above paragraph.

Effective:

Revision Effective: 3/02

13. FAMILY MEDICAL LEAVE ACT (FMLA)

FMLA leave shall be according to CFR, 825 (SDOL Rules and Regulations). FMLA entitles qualifying employees of the State of Montana up to 12 weeks of unpaid, job-protected leave for specified family and personal reasons. To qualify, State employees must have worked for the State of Montana for a total of 12 months just prior to the leave with a minimum of 1040 hours.

FMLA QUALIFYING CONDITIONS

For birth or placement of a child for adoption or foster care (mother or father).

To care for an immediate family member (spouse, child or parent) with a serious health condition.

To take medical leave when the employee is unable to work because of a serious health condition (an illness, injury, impairment, or physical or mental condition).

If the leave is foreseeable, the employee must request leave 30 days in advance. When it is not possible to provide advance notice, the employee must provide notice as soon as “practicable,” ordinarily within one or two business days after the employee learns of the need for leave.

OPI may require employees to use appropriate paid leave while on FMLA leave according to specific leave eligibility requirements.

For the duration of FMLA leave, the State contributions are covered for health coverage under any “group health plan.” In a paid leave status, State and employee contributions will continue. In a leave without pay, arrangements for payment of employee contributions must be made.

Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave will not result in the loss of any employment benefit accrued prior to the start of the leave.

See Attachments 13-A and 13-B for FMLA Certification and Leave Approval forms.

Effective: 3-02

ATTACHMENTS 13

FAMILY AND MEDICAL LEAVE ACT (FMLA)

- Attachment 13-A, FMLA Leave Request Form
- Attachment 13-B, Medical Certification Form

OFFICE OF PUBLIC INSTRUCTION
FMLA LEAVE REQUEST FORM

Employee Name _____

Social Security Number _____

Date & Time of Notification _____

Name of Person Taking Information _____

Reason for Absence _____ Dates Requested _____

____ Annual leave ____ Compensatory Time ____ FMLA

____ Sick leave

Person taking leave for:

____ Self ____ Parent ____ Other family member
____ Spouse ____ Child (Name _____)

FMLA Qualifying Conditions

- ____ For birth or placement of a child for adoption or foster care (mother or father)
- ____ To care for an immediate family member (spouse, child or parent) with a serious health condition
- ____ To take medical leave when the employee is unable to work because of a serious health condition

A “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves:

- * any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;
- * any period of incapacity requiring absence of more than three calendar days from work, school or other regular daily activities that also involves continuing treatment (or under the supervision of) a health care provider;
- * continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days, and for parental care.

Supervisor/Employee Information

You may want to consider notifying your supervisor or asking your employee the following information when the leave is requested, for example:

Do you have work assignments that are pending that need to be completed by someone else during your absence?

____ Yes ____ No

Are there meetings that need to be canceled and/or other people notified of your absence?

____ Yes ____ No

Who will be responsible for covering during your absence?

Supervisor Information

Has the medical leave request exceeded three (3) working days? ____ Yes ____ No

Has the leave exceeded five (5) working days? ____ Yes ____ No (Call the personnel office to determine medical certification requirements).

What type of leave is being requested by employee for an FMLA absence?

____ sick ____ annual ____ comp time

____ direct grant of sick leave ____ leave without pay

Employee Signature

Date

Supervisor Signature

Date

(Attach form to the time sheet that is completed at the end of the pay period)

MEDICAL CERTIFICATION FORM

To be completed by certified Health Care Provider

1. Employee Name:
2. Patient Name (if different from employee):
3. The attached sheet describes what is meant by a **serious health condition** under the Family and Medical Leave Act. Does the patient's condition¹ qualify under any of the categories described? If so, please check the applicable category.

(1)____ (2)____ (3)____ (4)____ (5)____ (6)____, or none of the above ____

4. Describe the medical facts which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:
5. a. State the approximate **date** the condition commenced, and the probable **duration** of the condition (and also the probable duration of the patient's present **incapacity**² if different):

b. Will it be necessary for the employee to take work only **intermittently or to work on a less than full schedule** as a result of the condition (including for treatment described in Item 6 below)?_____

If yes, give the probable duration:

- c. If the condition is a **chronic condition** (Condition #4) or **pregnancy**, state whether the patient is presently incapacitated and the likely duration and **frequency of episodes** of incapacity:
6. a. If additional **treatments** will be required for the condition, provide an estimate of the probable number of such treatments.

¹ Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

² **Incapacity**, for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

If the patient will be absent from work or other daily activities because of **treatment** on an **intermittent or part-time** basis, also provide an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any.

- b. If any of these treatments will be provided by **another provider of health services** (e.g., physical therapist), please state the nature of the treatments.
 - c. If a **regimen of continuing treatment** by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):
7. a. If medical leave is required for the employee's **absence from work** because of the **employee's own condition** (including absences due to pregnancy or a chronic condition), is the employee **unable to perform work** of any kind? _____
- b. If able to perform some work, is the employee **unable to perform any one or more of the essential** functions of the **employee's job** (the employee or the employer should supply you with the information about the essential job functions)? _____ If yes, please list the essential functions the employee is unable to perform:
- c. If neither a. nor b. applies, is it necessary for the employee to be **absent from work for treatment**? _____
8. a. If leave is required to **care for a family member** of the employee with a serious health condition, **does the patient require assistance** for basic medical or personal needs or safety, or for transportation? _____
- b. If no, would the employee's presence provide **psychological comfort** be beneficial to the patient or assist in the patient's recovery? _____
- c. If the patient will need care only **intermittently** or **on a part-time basis**, please indicate the probable duration of this need:

(Signature of Health Care Provider)

(Type of Practice)

(Address)

(Telephone Number)

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

(Employee signature)

(Date)

A. A **Serious Health Condition** means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient Care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

(a) A period of incapacity of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

(1) **Treatment³ two or more times by a health** care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) **Treatment** by a health care provider on **at least one occasion** which results in a **regimen of continuing treatment⁴** under the supervision of the health care provider.

3. Pregnancy

Any period of incapacity due to **pregnancy**, or for **prenatal care**.

4. Chronic Conditions requiring Treatments

A **chronic condition** which:

(1) Requires **periodic** visits for treatment by a **health care** provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(2) Continues over an **extended period of time** (including recurring episodes of a single underlying condition); and

(3) May cause **episodic** rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/long-term Condition Requiring Supervision

A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be **under the continuing supervision of, but need**

³Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

⁴A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple treatments (Non-Chronic Condition)

Any period of absence to receive **multiple treatments** (including any period or recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for **restorative surgery** after an accident or other injury, **or** for a condition that would likely **result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment**, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

14. GRIEVANCE

An employee may file a grievance based on the application or interpretation of laws, written rules, personnel policies and procedures which adversely affect the employee, unless specifically prohibited from doing so by statute or rule.

An employee may file a grievance under the appropriate statutory procedure, OPI grievance policy or, where applicable, the bargaining unit contract, based on receipt of a formal disciplinary action or due to serious employment issues. Grievable actions may include, but are not limited to, written warning, suspension without pay, disciplinary demotion or discharge, discrimination or sexual harassment.

No employee may file a grievance based on corrective counseling or oral warnings. All grievances or disagreements must be discussed with the immediate supervisor prior to the filing of a formal grievance. In serious cases involving the supervisor such as sexual harassment, the employee must discuss the disagreement with the next higher manager not involved in the issue.

A grievant shall not use paid working time to prepare and pursue a grievance. A grievant may request to use appropriate paid leave, accrued compensatory time or leave of absence without pay to prepare a grievance. Use of leave or compensatory time shall be requested and approved consistent with administrative rules and agency policies relating to the type of leave requested. Time spent by the grievant attending a hearing is paid working time only during the grievant's regular work shift and shall not exceed eight (8) hours per day.

An employee other than the grievant may, at the Office of Public Instruction's discretion, be given working time off to participate in an investigation or hearing. This time may be paid working time, if the employee's participation is at the Office of Public Instruction's request. Other employees may request to use appropriate paid leave, leave of absence without pay, or accrued compensatory time to attend a hearing. Use of leave or compensatory time shall be requested and approved consistent with administrative rules and the Office of Public Instruction policies relating to the type of leave requested.

DEFINITIONS

Employee—any Office of Public Instruction employee except:

The members of the personal staff of the Superintendent;

Individuals covered by a procedure provided in a collective bargaining agreement, or covered by a statutory grievance procedure;

Individuals who have not completed a probationary period or whose probationary period is extended and the employee has not attained permanent status;

An individual hired into a temporary position or an individual temporarily hired into a permanent position for less than 12 months and not eligible to attain permanent status;

Individuals contracted as independent contractors who perform their duties under the terms of a personal services contract.

Grievance—a complaint or dispute initiated by an employee regarding the application or interpretation of written laws, rules, personnel policies or procedures which adversely affects the employee.

Grievant—an employee who has filed a formal grievance.

Management—those individuals, beginning with the employee's immediate supervisor, and including other managers in the direct line of authority above the supervisor, who can resolve a grievance.

Permanent position—a position designated on the appropriate Office of Public Instruction list of authorized positions and approved as such in the biennium budget.

Permanent status—the status an employee attains after satisfactory completing an appropriate probationary period in a permanent position.

GRIEVANCE PROCEDURE

STEP 1—INFORMAL RESOLUTION

The employee has 10 working days from the occurrence of the grievable event to informally resolve the grievance with the immediate supervisor. Both the employee and supervisor are encouraged to resolve the grievance informally whenever possible before proceeding to Step 2, formal grievance.

STEP 2—FORMAL GRIEVANCE

A formal grievance shall be filed in writing within 15 working days from the occurrence of the grievable event. The formal grievance shall be filed with the grievant's immediate supervisor, or the next level above the immediate supervisor with a copy sent to the Personnel Officer.

A formal grievance must state specifically the law, written rule, policy, and/or procedure violated; when the action occurred, and the remedy desired by the grievant. It shall be signed and dated by the grievant.

The immediate supervisor or the supervisor with whom the grievance was filed shall respond in writing to a formal grievance within (5) five working days from the date it is filed. The grievance is resolved at Step 2 if the grievant accepts the immediate supervisor's response, or if the grievant fails to advance the grievance to step 3 within (5) five working days of the receipt of management's response.

STEP 3—APPEAL TO ASSISTANT SUPERINTENDENT OR DEPUTY SUPERINTENDENT

In the event that the immediate supervisor's response is not acceptable to the grievant, the grievance may be forwarded to the Assistant Superintendent responsible for the program area or Deputy Superintendent within (5) five working days of the receipt of the immediate supervisor's response. The Assistant or Deputy Superintendent will have (5) five working days to respond in writing.

STEP 4—MEDIATION AND HEARING

If a grievant wishes to advance the grievance to step 4, he/she shall notify the Personnel Officer that the grievance is to proceed to mediation. The Personnel Officer or any other mutually acceptable individual may serve as mediator. Time lines will be suspended while the grievance is in mediation. Either party or the mediator may end the mediation process at any time by notifying all parties in writing. Mediation must be completed within 60 days of the date that it began.

If a grievant has asked to advance the grievance to Step 4, Mediation, the grievant shall notify the Personnel Officer in writing when Mediation has ended.

If the subject of the grievance is suspension without pay for more than 10 working days, disciplinary demotion, or discharge, the Superintendent shall order a hearing using the following hearing process. All other grievance shall advance to final review by the Superintendent.

HEARING PROCESS

Within 10 working days of advancement of the grievance to step 4, the Superintendent shall request either:

A hearings examiner assigned by the office of the Attorney General

-or-

A list of three to five potential hearings examiners from the Board of Personnel Appeals.

An examiner shall be selected in one of the following manners:

Management and the grievant shall agree on one of the hearings examiners;

-or-

Each shall alternately strike names from the list and the remaining person shall serve as hearings examiner. The grievant shall strike the first name.

The hearings examiner shall set the time and place for the hearing. The parties shall receive notice of the hearing either personally or by certified mail not less than five working days before the hearing.

Both parties shall have:

- The right to introduce evidence;

- The right to cross-examine;

- The right to be represented; and

- The right to a recommendation for resolution based on the recorded evidence and matters officially noticed.

Within 30 working days of the selection of the hearings examiner, the hearings process shall be completed, and the hearings examiner shall submit a written summary of findings and shall make a non-binding recommendation for resolution to the Superintendent.

The Office of Public Instruction shall pay costs of:

- One half of the hearings examiner fee

- Physical arrangements for a hearing

- Management's witnesses and evidence

The grievant shall pay fees and expenses of:

- One half of the hearings examiner fee

- The grievant's representative

- The grievant's witnesses and evidence, unless the witness also is a management witness.

A recording shall be made of the hearing. Either party may request a transcript of a hearing. The party requesting the transcript shall bear the cost. If both parties request a transcript, they will share the cost.

The Superintendent shall issue the final administrative decision within 10 working days of receipt of the hearing summary.

STEP 5—SUPERINTENDENT'S REVIEW

The Superintendent shall review the grievance and issue the final administrative decision on the grievance either:

Within 10 working days of the grievant's request for final review; or

Within 10 working days of receipt of the hearings summary.

The Superintendent shall notify the grievant and management concerning any additional actions ordered which will delay the decision.

At the discretion of the Superintendent, the final review may include review of the grievance form, review of management's response, and review of the record of any investigation or hearing. The Superintendent will not review or consider any record of the mediation attempt. The Superintendent may authorize an additional investigation, may conduct a discussion with the grievant or may order a hearing.

The Superintendent's final decision shall be issued in writing. This is the final step of this grievance procedure.

FAILURE TO ACT

If the employee fails to respond within the time frames established for a step, the grievance is considered resolved in favor of the last response given by management. The employee may not re-file the grievance.

If management fails to respond within the time frames established for a step, the grievant may proceed to the next appropriate step of the procedure.

WAIVERS

Any step of the procedure and time frames in the procedure may be waived upon written agreement of both parties.

RESOLUTION

A grievance is resolved when:

The grievant requests in writing that the grievance be withdrawn or signs a waiver that a resolution has been achieved;

The grievant leaves state employment, unless discharged;

The grievant dies, unless the grievance involves pay or fringe benefits;

The grievant fails to advance the grievance in the required time frames; or

The final steps of the grievance procedures are completed.

EXCLUSIVITY

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Nothing in this policy precludes an employee who is alleging unlawful discrimination from concurrently exercising any statutorily-protected right to file a complaint with a civil rights enforcement agency.

Effective:

Revision Effective: 3-02

15. HIRING AND RECRUITMENT

It is the policy of the Office of Public Instruction to hire competitively for classified positions.

A standard job announcement will be completed by the hiring supervisor or that person's designee and forwarded through an Assistant Superintendent to the Office of Public Instruction Personnel Officer for approval.

It will be the responsibility of the Assistant Superintendent to confirm the position description is current and sufficient spending authority exists for the position. The Personnel Officer will ensure the vacancy announcement is posted on bulletin boards in each of the work places and e-mailed to agency personnel for internal recruitment. For external recruitment, the job announcement will be posted with the Job Service and distributed to interested organizations and individuals. In compliance with the State Employee Protection Act, a position will not be opened externally until it is determined that no qualified candidates are available from the Job Registry.

When an OPI position grade 12 or below is to be filled, every effort will be made to fill the position from within the agency. Internal postings will be held open at least 7 calendar days before they are posted externally. All open positions grade 13 and above will be posted externally unless the Superintendent determines otherwise.

Open positions posted externally must be posted with the Job Service for at least 7 working days and are usually held open for 15 calendar days.

APPLICATION PROCESS

All applicants must complete or update a standard State of Montana job application and complete a supplement, if required, when applying for jobs internally or externally. Applications received or postmarked after midnight on the closing date will not be considered.

SELECTION PROCESS

The selection process will generally consist of the application, the supplemental questions, an oral interview and a skills demonstration test, which may be waived for a position at the request of the hiring supervisor with the approval of an Assistant Superintendent and the Personnel Officer.

Applications will be taken at the Personnel Office whether the application process is internal or external (For external applications, the Job Service will also collect them). They will be held at the Personnel Office until the job application period closes. They will be released to the hiring supervisor when the Personnel Officer has received the screening instrument for the applications, a copy of a job-related skills demonstration test and scoring criteria and the interview questions, with model answers and weights. The Personnel Officer will ensure that only job-related criteria are used. When requested, the Personnel Officer may screen applicants to determine those

meeting minimum qualifications. Incomplete applications will not be forwarded to the hiring supervisor.

A screening device will be applied to the applications to determine the most qualified individuals for the position. Normally, all qualified individuals will be interviewed and tested. However, when a significant number of qualified applicants are identified, the hiring supervisor and Personnel Officer will select, at a natural break in the pool of candidates, an appropriate number of applicants to be interviewed and tested.

For most positions, a committee of no fewer than two members will be selected by the hiring supervisor to screen the applications, conduct the oral interview and rate the applicants. The applicants will be rated on their responses to the supplemental and interview questions according to the model answers and their weights. The list of applicants interviewed and tested, their test scores, interview scores and weights will be provided to the Personnel Officer when making a recommendation for selection.

Generally, a minimum score of 70 percent must be attained on both the skills demonstration test and the oral interview to be considered qualified for the job except in the case of a Veteran or Disabled Persons Preference. (See Application Guidelines in the Recruitment and Selection Procedure) In the event that no individual applicant passes both the structured test and interview, the hiring supervisor may consider a training assignment for the most qualified applicant. Indication of a training assignment must be included in the hiring letter. The training agreement must be signed by the Superintendent, Personnel Officer and job candidate before their employment begins. A model format for a training assignment agreement is attached to this policy.

The hiring supervisor will check references. Reference checks will be used to determine whether or not individuals who successfully complete the skills demonstration test and oral interview are qualified to satisfy expectations. Generally, references will only be checked on those applicants considered for employment.

SENIORITY

Generally, the person scoring highest on the combined application supplement, oral interview and skills demonstration test would be the recommended applicant, barring no adverse recommendation from previous employers. Seniority must be measured on a point system at no less than 1 percent per year of the applicant's own score in the selection process. (See Application Guidelines.)

HIRE DECISION

Upon receiving the hiring supervisor's recommendation and application process documentation, the Personnel Officer will review the hiring process to determine if it complies with the intent of this policy. The Personnel Officer will also ensure appropriate preferences, such as veterans preferences, have been applied.

If the Personnel Officer concurs with the hiring supervisor's recommendation, it will be forwarded to the Superintendent for final approval. The forwarded recommendation will include the conditions under which the job candidate would be hired.

The final decision for hiring will rest with the Superintendent. The Superintendent will approve and send the letter of hire. The letter will include the name of the supervisor, start date, salary, grade, position, office location, probationary period and any special conditions of hire.

The unsuccessful applicants will also receive a letter notifying them that they have not been selected within 14 days of the hiring decision. These letters will be sent by the Personnel Officer.

Applicants are not to be notified of their selection until approved by the Superintendent. Applicants will not start work until they have received a hire letter and, if appropriate, a signed training agreement.

Effective:

Revision Effective: 3-02

ATTACHMENTS 15

HIRING AND RECRUITMENT

- ATTACHMENT 15-A, RECRUITMENT FORM
- ATTACHMENT 15-B, OPI HIRING GUIDE
- ATTACHMENT 15-C, TRAINING ASSIGNMENT MODEL FORMAT

RECRUITMENT FORM

The purpose of this form is to assist supervisors in assuring that all of the information necessary to open and fill a position is provided to the personnel office.

1. Position Status

Position Title _____ Grade _____

_____ Position Number _____ Responsibility Center
 _____ Responsibility Center
 _____ Responsibility Center

_____ Permanent, _____ Full Time, _____ Part Time

_____ Hours per week

_____ to _____ Proposed Schedule

_____ Temporary _____ Short Term Worker _____ Full Time _____ Part Time

For temporary and short term positions:

_____ Approximate duration (must be no more than 12 mos. for a Temporary and no more than 90 days in a continuous 12 month period for a Short Term Worker)

2. Advertising/Posting Options

_____ Open Internal (Required for all OPI Positions)
 _____ Number of days (Minimum of 7 required)

_____ Open External
 _____ Number of days (Minimum of 5 required, 10 if statewide)

_____ Local (Ad in the local paper and Job Service)

_____ Statewide (Ad in the six major papers and Job Service)

_____ Other instructions for ad distribution _____

3. Recruitment and Selection tools (Please attach)

____ Vacancy Announcement

____ Text for newspaper ad

____ Application supplement questions and model answers

____ Interview questions and model answers

____ Other selection tool and model response (please list)

4. Scoring

____ Final score to be total of all selection criteria

____ Final score will not include supplement & application

____ Usual application of seniority (1% [.010] of their own score per year of service with OPI for MPEA contract members, on the combined scores for the application supplement, structured interview and test.)

5. Names of proposed selection panel

6. Authority

Date

Approved by Supervisor_____

Approved by Department Head_____

Approved by Personnel Officer_____

OPI HIRING GUIDE

TRAINING ASSIGNMENT AGREEMENT

Employee:_____

Date: _____

Supervisor: _____

In accordance with the Office of Public Instruction's Hiring Policy, and with MOM, Volume III, policy 3-0505, Rule 1806, the following written agreement is set forth:

It is agreed that _____ will enter into a training assignment under position number _____ of the Office of Public Instruction. This position is classified as a _____, grade _____.

The purpose of this training assignment is to allow the incumbent to attain additional experience and training related to the required knowledge, skills and abilities needed to perform the duties and responsibilities of this position. In the opinion of the employer, the Office of Public Instruction, the incumbent does not meet the minimum qualifications of this position.

This training assignment will be for a period of six months. It is to begin _____ and end _____. A mid-term progress review will be conducted and documented on or about _____ between the incumbent and supervisor.

To obtain the qualifying experience and training for this position, the employee will complete the following:

Area	Training Activities	Demonstrated Skill	Target Date
	Purpose		
	How:		
	Purpose:		
	How:		
	Purpose:		
	How:		
	Purpose:	.	
	How:		
	Purpose:		
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	Purpose		
	How:		

If completion of the Training Assignment by the incumbent is found to be unsatisfactory, the Office of Public Instruction may exercise the option of renewing the training assignment for another period not to exceed six months, terminate the incumbent, move the incumbent to another position or take other appropriate action.

Upon successful completion of the training assignment, the incumbent's salary will be raised to the appropriate grade related to the classification of the position under the guidance of the Office of Public Instructions Hiring Policy and MOM, Volume III, Policy 3-0505.

The training assignment may be terminated early if in the opinion of the employer, the Office of Public Instruction, the employee has successfully gained the required knowledge, skills and abilities needed to perform the duties of the position or for unsatisfactory job performance. A written report documenting the completion of the training assignment will be sent to the Personnel Officer.

The Office of Public Instruction agrees to provide the incumbent the necessary training, guidance, and supervision whereby he/she may successfully complete the training assignment. The employee is entitled to any and all rights and benefits given to an employee of the Office of Public Instruction under a collective bargaining contract.

It is agreed that the incumbent shall be paid at the rate of a grade _____ (\$_____/hr), to begin on _____. Upon successful completion of the training assignment, the incumbent will be paid at a grade _____ (\$_____/hr).

Employee

Date

Supervisor

Date

Personnel Officer

Date

Superintendent

Date

16. HOLIDAY LEAVE

DEFINITIONS

Full-time employee—an employee who normally works 40 hours a week.

Holiday—a legal state holiday as provided in 1-1-216, MCA.

Holiday benefits—pay at the regular rate up to eight hours or equivalent paid time off up to eight hours paid to an eligible employee when the state observes a legal state holiday.

Part-time employee—an employee who normally works less than 40 hours a week.

Premium pay—compensation paid to an employee covered by the Fair Labor Standards Act (FLSA) at 1 _ times the regular rate only for hours worked on a holiday.

HOLIDAY LEAVE POLICY

The following are State of Montana holidays:

- New Year's Day, January 1;
- Martin Luther King Jr's Birthday, the third Monday in January;
- Lincoln's and Washington's Birthdays, the third Monday in February;
- Memorial Day, the last Monday in May;
- Independence Day, July 4;
- Labor Day, the first Monday in September;
- Columbus Day, the second Monday in October;
- Veteran's Day, November 11;
- Thanksgiving Day, the fourth Thursday in November;
- Christmas Day, December 25;
- State General Election Day (in even numbered years); and

When a holiday falls on a Sunday the holiday will be observed the following Monday. When a holiday falls on a Saturday the holiday will be observed the preceding Friday.

An eligible employee shall receive holiday benefits for legal state holidays. This benefit is paid time off or pay at the regular rate. Holiday benefits shall not exceed eight hours per holiday. Holiday benefits are calculated based on an employee's regular schedule. An employee shall not be eligible to receive holiday benefits if the employee is a new employee to state government and begins work on the day after a holiday. An employee shall not receive holiday pay when an employee is reinstated or re-employed following a reduction in force, returns to work following a leave of absence without pay of more than one pay period or following a disciplinary suspension when the first day of work is following a holiday.

HOLIDAY LEAVE FOR PART-TIME EMPLOYEES

Part-time employees receive holiday benefits on a prorated basis. Holiday benefits shall be an average of the employee's hours regularly scheduled to work in the pay period. To find the average, the number of hours regularly scheduled to work in a pay period in which the holiday falls shall be divided by 10 (the number of working days in a pay period). Holiday benefits shall not exceed 8 hours.

If the pay period in which the holiday falls is not characteristic of the employee's regular schedule, the Office of Public Instruction has the discretion to approximate the employee's schedule for purposes of determining holiday benefits. If the agency cannot determine an employee's regular schedule, the number of hours in a pay status divided by 10 may be used to determine the holiday benefit.

PAY FOR WORK PERFORMED ON A HOLIDAY

An employee who is covered by the Fair Labor Standards Act (FLSA) and who receives the supervisor's approval to work on the day a holiday is observed shall be paid for all hours actually worked. If the holiday benefit is a paid day off to be taken at a later day (Banked Holiday Benefit), the employee shall receive credit for time at the rate of 1 _ times for every hour worked on the holiday. If the holiday benefit is to be pay, but no day off, the employee shall receive pay at 2 _ times the regular rate for every hour worked on the holiday.

An employee who is exempt from the FLSA and who receives approval to work on the holiday will be paid at the regular rate of pay for the number of hours worked on the holiday plus paid time off equivalent to the number of hours worked on the holiday. Alternate paid time off for work performed on a holiday (Banked Holiday Benefit) may be taken at a later date upon request by the non-exempt or exempt employee upon approval by the supervisor. An alternate paid day off for work performed on a holiday should be recorded as Banked Holiday Benefit on the holiday date when it was accrued.

HOLIDAY LEAVE FOR ALTERNATE WORK SCHEDULE EMPLOYEES

The method used to calculate holiday pay for an employee who works four, 10-hour days, part time, or in a job share situation may result in the employee's total earnings for the pay period being more or less than normal. Holiday benefits shall not exceed eight hours per holiday.

If the employee would be eligible to receive additional pay due to the holiday, the Office of Public Instruction may require the employee to take off an equivalent number of hours without pay in the same workweek to maintain a consistent paycheck. If the employee would receive less pay than usual, the employee may be allowed to work additional hours in the same pay period to make up the difference or may be allowed to take annual leave or accrued compensatory time.

Effective:

Revision Effective: 3-02

17. JOB SHARING

DEFINITION

Job Sharing—sharing by two or more persons of a single permanent position.

POLICY

The Office of Public Instruction allows job sharing in positions which lend themselves to the practice. The Montana Operations Manual Volume III contains a job sharing guide that should be used in evaluating positions for job sharing.

Supervisors may identify positions which lend themselves to job sharing and may propose a job sharing arrangement for those positions. An employee may also propose job sharing in a position by making a written request to his or her immediate supervisor. The request must identify the reasons the employee is requesting a job share and the expected benefit to the Office of Public Instruction.

The supervisor shall request job sharing by submitting a written proposal, with the concurrence of the Assistant Superintendent, to the Personnel Officer. For assistance in preparing a job sharing plan, contact OPI Personnel.

POSITION EVALUATION

Supervisors will evaluate positions for job sharing based on a current position description. Evaluation of positions for job sharing shall include an examination of the following factors.

- Does it require a broad range of skills
- The extent to which duties can be clearly defined and divided
- The stress entailed in the duties
- Peaks and valleys in work load
- Monotony of the duties
- Supervision exercised and received
- Benefits derived from duties being performed during unusual working hours
- Benefits to the Office of Public Instruction

Generally, positions with clearly defined duties, peaks and valleys in work load, a high degree of stress or numerous monotonous tasks will lend themselves to a job share arrangement. Positions with supervisory responsibilities and/or extensive contact with the field will not lend themselves to job sharing.

The Personnel Officer will review the proposal and consult with the Superintendent before any proposals are granted. All job sharing of positions must be approved by the Superintendent.

INCUMBENT EVALUATION

Criteria for incumbent evaluation should, at a minimum, reflect the following qualities and conditions.

- Job sharing partners usually combine diverse skills that are complementary;
and
- Job sharing partners have compatible personalities;
and
- Job sharing salaries are equitable between partners and within the work unit;
and
- A plan exists for maintaining and managing accountability between the partners.

Effective:

Revision Effective: 3-02

ATTACHMENT 17

JOB SHARING

- Attachment 17-A, Job Sharing Proposal Form

MAKING THE JOB SHARE PROPOSAL

There is no required way in which a job share arrangement must be proposed. It may be done in a letter or memorandum. It may be done verbally, or the following form may be used. Whichever method is used, some written approval with the effective date of the arrangement should be included in the files of job share partners. This is important because the effective date of the arrangement triggers the pro-rations of benefits, which is discussed in a later section.

The form provides space to indicate the information on the partners, the positions involved, effective date, the proposed work schedule, the proposed division of duties and responsibilities and management's response. The position description, work plan and performance appraisal all should be used to complete the proposal.

OPI JOB SHARING PROPOSAL

SECTION I. GENERAL INFORMATION

Name _____
Current Position Title _____
Current Grade _____

Unit _____
Division _____
Telephone _____

Name _____
Current Position Title _____
Current Grade _____

Unit _____
Division _____
Telephone _____

SECTION II. POSITION TO BE SHARED

Position Title _____
Grade _____
Unit/Division _____
Immediate Supervisor _____

Effective date of
Job Share _____

SECTION III. OUTLINE OF YOUR PROPOSED JOB SHARING SCHEDULE FOR THIS POSITION (Please complete both A & B)

A. Name _____

Time	Monday	Tuesday	Wednesday	Thursday	Friday

B. Name _____

Time	Monday	Tuesday	Wednesday	Thursday	Friday

SECTION IV. DESCRIPTION OF PROPOSED HANDLING OF DUTIES AND RESPONSIBILITIES

Briefly describe how the following items will be handled in your job sharing plan (attach additional pages if needed).

1. Division of duties and responsibilities listed in position description or work plan.
2. Exercise of supervision
3. Use of equipment and physical space
4. Personal contacts
5. Reduction of duplication of effort and error
6. Communication between partners
7. Communication with supervisor
8. Development of work methods and procedures (work plan)
9. Development of performance appraisal
10. Other considerations pertinent to this position:

SECTION V. APPROVAL OF PROPOSED JOB SHARING PLAN

Approved _____ Approved with revisions _____

Not approved _____

Comments:

Signatures:

Supervisor

Date

Administrator

Date

Superintendent or Designee

Date

18. JURY DUTY AND WITNESS LEAVE

DEFINITIONS

Employee—any person employed by the Office of Public Instruction on a permanent, temporary, full-time, part-time, or seasonal basis. This does not include an individual under contract with the state as an independent contractor.

Jury duty leave—an approved leave of absence with pay for an employee who has been properly summoned to serve as a juror in a court or judicial proceeding.

Witness leave—a leave of absence with pay for an employee who has been properly subpoenaed to serve as a witness in a court, judicial proceeding, or administrative proceeding.

POLICY

An employee on authorized jury duty or witness leave shall receive normal gross salary or wage and will continue to earn and accrue all benefits that the employee would normally earn. An employee shall collect all fees and allowances payable as a result of serving on jury duty or as a witness and forward the fees to the OPI payroll clerk within 3 days of receiving them. Any expense or mileage allowance paid by the court shall be retained by the employee if the employee is using a personal vehicle. If the employee chooses to charge juror or witness time off against annual leave or compensatory time, the employee shall also keep all juror or witness fees paid by the court. A part-time employee will receive pro-rated compensation for those hours the employee is usually scheduled to work.

An employee shall request jury duty or witness leave in writing. The request shall be given to the immediate supervisor and shall include the anticipated length of the leave and a copy of the summons or subpoena. The request for jury duty or witness leave should be made as soon as possible after the employee receives the summons or subpoena requiring appearance. Authorized jury duty or witness leave may only be charged against the employee's annual vacation time or accrued compensatory time at the employee's option.

REQUEST TO BE EXCUSED FROM JURY DUTY

The Superintendent or designee may request the court to excuse OPI employees from jury duty if those employees are needed for the proper operation of the agency. In view of this provision, all requests to excuse an employee from jury duty for this reason should cite 2-18-619, MCA, and must be signed by the Superintendent.

Effective:

Revision Effective: 3-02

19. LEAVE WITHOUT PAY

DEFINITIONS

Leave of absence without pay—a period of unpaid absence from employment requested by an employee and approved at the Office of Public Instruction's discretion which does not result in a break in service.

Short-term leave—a leave of absence without pay of up to 15 consecutive working days.

Long-term leave—a leave of absence without pay of more than 15 consecutive working days.

POLICY

An employee may be placed on leave of absence without pay. The Office of Public Instruction may require an employee to use all appropriate accrued leave or compensatory time before approving a leave of absence without pay request, unless the employee is requesting leave to serve in a public office or for extended military service.

Employees may request a leave without pay by submitting a written request to their immediate supervisor. The request must specify the reason for the requested leave and the expected date of return to work. A short-term leave of absence may be approved by the immediate supervisor or the division administrator. A long-term leave of absence must be approved by the Superintendent.

Factors to be considered in granting leaves include but are not limited to:

- Loss of productivity
- Overtime and compensatory time impacts on other employees
- Hiring and training costs for temporary replacements
- Impact on the budget
- Retention of employee requesting the leave
- Improved performance resulting from the leave

The division administrator shall inform an employee of reinstatement rights in writing at the time a long-term leave of absence is approved. The written notification will include a deadline for notice of availability for reinstatement from a long-term leave. The employee's failure to notify the Office of Public Instruction by the deadline may result in the loss of all reinstatement rights and the employee may be terminated.

PAY AND BENEFITS

The pay and benefits for an employee on leave without pay status will be governed by the State of Montana Pay Plan Rules and any other rules governing affected pay and benefits, i.e., sick leave, annual leave and holiday pay.

State Service shall not be considered to be interrupted by an approved leave without pay.

An employee may self-pay insurance premiums to the state employee group benefits plan for one calendar year from the effective date of a leave of absence without pay.

LEAVE TO SERVE IN OFFICE

Leave for purposes of serving in an elected or appointed public office must be approved by the Superintendent to a maximum of 180 days annually.

Effective:

Revision Effective: 3-02

20. MILITARY LEAVE

Military leave is separate and distinct from other leaves. Employee time in military leave shall not be charged to vacation leave.

A permanent or temporary full-time employee, who is a member of the organized state militia or the military forces of the United States and who has completed the six month qualifying period, is eligible to receive up to 15 working days per calendar year of military leave.

A permanent, or temporary part-time employee, who is a member of the organized state militia or the military forces of the United States and who has completed the six month qualifying period, is eligible to receive prorated military leave.

An employee who has not completed the qualifying period is not eligible to receive military leave; however, the employee must be given leave without pay to attend encampments, cruises, or other similar training.

An employee on military leave receives the regular gross salary and benefits. Military leave, which is not used in one calendar year may not be carried over to the next calendar year. Military leave taken over a holiday will not be credited against an individual's military leave allowance.

An employee requesting military leave shall submit a written request to the immediate supervisor. The request shall include the dates of leave and a copy of the military orders.

The Office of Public Instruction will allow an employee to take time off to attend any required duty for which the employee presents the appropriate military orders. Military leave shall not be taken for regularly scheduled drills.

When coinciding with regular working days, request for use of annual vacation leave, compensatory time or leave without pay must be approved for such drills. Use of paid leave may not be required. (See Leave of Absence for Military Service guide, MOM Manual and at State Personnel Division website, MOM Manual, Guides.)

The Office of Public Instruction will not allow an employee to make up any regular or overtime hours missed as a result of attending training such as drills.

MONTANA NATIONAL GUARD

When members of the Montana National Guard are ordered to active duty for activities enumerated in the Montana Constitution, Article VI, Section 13, they shall have the option of taking annual vacation leave or being placed in a leave without pay status.

If the employee elects to take leave without pay during the period for which he or she is ordered to state active duty by the Governor, the employee shall continue to accrue annual vacation leave, sick leave, and other employee benefits when employed by the Department of Military

Affairs even if it extends beyond 15 working days, since the employee is paid from state monies for the time on active duty.

Effective:

Revision Effective: 3-02

21. MOVING AND RELOCATION ALLOWANCE

The Office of Public Instruction may pay moving and relocation expenses for newly hired employees into positions which have been hard to fill or for which exceptionally qualified candidates have applied. In general, OPI payment of moving and relocation expenses is intended to be used as a hiring incentive to recruit high quality new employees to the agency. In addition, OPI may pay moving and relocation expenses for employees who move from one geographical location (50 miles or greater) if the move is required by the OPI management.

Costs to be paid/reimbursed by OPI are limited to either charges by a commercial moving company to pack, transport and/or unload household and personal belongings that belong to the employee or immediate family or charges for commercial van/truck rental and associated costs.

Approval of an employee's moving and relocation expense allowance is made by the hiring supervisor and the Deputy Superintendent. A copy of the OPI MOVING AND RELOCATION ALLOWANCE AGREEMENT (see Attachment 21-A) must be signed by all parties and submitted to the OPI Purchasing Agent before payment can be made. A copy of the agreement will be kept in the employee's personnel file.

Effective: 5-4-01

ATTACHMENT 21

MOVING AND RELOCATION ALLOWANCE

- Attachment 21-A, Model Agreement

OPI MOVING AND RELOCATION ALLOWANCE AGREEMENT

You are eligible for a moving and relocation allowance from the state for your move to Helena to accept employment with the Office of Public Instruction (OPI). This offer has the following conditions:

1. You will be required to obtain three bids prior to a move being approved. Bids must be faxed to Purchasing Agent, OPI Purchasing, 406-444-1369 to receive approval.
2. If you terminate your employment with the OPI for any reason within a year of the date of employment, you will be required to repay a portion of the relocation reimbursement equal to the number of whole months remaining in the initial year divided by twelve. For example, a person who terminates after three months would be required to repay 9/12ths of the moving allowance.
3. The moving and relocation allowance is limited to the amount of \$_____.

Costs paid under this agreement are limited to either charges by a commercial moving company to pack, transport and/or unload household and personal belongings that belong to you and your immediate family or charges for commercial van/truck rental and associated costs. Original invoices/receipts must be submitted to supervisor for payment/reimbursement.

Please return this signed form to your hiring supervisor or the OPI Personnel Office, P.O. Box 202501, Helena, MT 59620-2501.

By signing below you are acknowledging that you have read, understood and consent to the above conditions. If you have questions, please contact the OPI Personnel Office, 406-444-2673 or your hiring supervisor.

Signed:

Employee

Date

Accepted and approved:

Hiring Supervisor

Date

Deputy Superintendent

Date

22. NONEXEMPT OVERTIME AND COMPENSATORY TIME

DEFINITIONS

Nonexempt or covered employee—an employee subject to the overtime provisions of the federal Fair Labor Standards Act of 1938, as amended (FLSA) and its regulations.

Nonexempt compensatory time—time accrued at a rate of one and one-half hours for each hour of employment for which overtime compensation is required pursuant to the FLSA, its regulations and this policy.

Overtime—time working by a nonexempt employee over 8 hours in a day or 40 hours in a workweek.

Workweek—any 40 hours worked during a period beginning at 12:00 A.M. Saturday morning and ending at 12:00 A.M. the following Saturday morning.

NONEXEMPT OVERTIME AND COMPENSATORY TIME POLICY

In addition to the provisions of the FLSA and its regulations, the Office of Public Instruction shall do the following when administering overtime compensation and nonexempt compensatory time:

Count all hours in a pay status as hours worked for the purpose of calculating a workweek. Absent time in a pay status, including holidays, paid leaves, and compensatory time taken off, is counted as hours worked.

Require employees to report overtime hours worked on a time and attendance form for the additional hours to be compensated as overtime hours or accrued as nonexempt compensatory time.

Record overtime and compensatory time in no smaller than one-half hour increments. The fractional increment may be rounded off, provided that over a period of time, this practice does not result in the failure to compensate the employee for the entire time actually worked.

Require employees to take nonexempt compensatory time off in no less than one-half hour increments.

OVERTIME COMPENSATION

Nonexempt employees shall receive overtime compensation at a rate of one and one-half times the employee's regular hourly rate for all hours in a pay status over 8 hours in a day or 40 in a workweek, unless the agency and the employee agree to the accrual and use of nonexempt compensatory time.

COMPENSATORY TIME

The Office of Public Instruction may allow some or all employees covered by the FLSA to accrue and use nonexempt compensatory time in lieu of cash overtime compensation. The Office of Public Instruction is not required to allow the accrual and use of nonexempt compensatory time.

Where the Office of Public Instruction chooses to allow employees to accrue overtime or nonexempt compensatory time, the following conditions will be met:

Accrual at the rate of one and one half (1 $\frac{1}{2}$) hours for each hour worked over 8 hours per day or 40 hours per week.

Advance agreement with the employee as a condition for use of compensatory time in lieu of overtime compensation and cash payments for unused nonexempt compensatory time upon termination of employment.

Advance approval from the appropriate supervisor whenever possible, for a covered employee to work hours which results in the accrual and payment of overtime compensation or the accrual and use of nonexempt compensatory time.

The Office of Public Instruction will cash out unused nonexempt compensatory time when a covered employee ends employment.

Non-exempt compensatory time may not be accrued beyond 240 hours, which represents not more than 160 hours of actual overtime worked.

In administering nonexempt compensatory time or overtime, the Office of Public Instruction may:

Pay cash for all or any portion of a covered employee's accrued compensatory time balance.

Adjust a covered employee's work schedule in a workweek or require the employee to take time off without pay so that the employee does not become eligible for the payment of overtime or accrual of nonexempt compensatory time; and

Require a covered employee to take accrued nonexempt compensatory time off during any work week.

Require the cash out of unused nonexempt compensatory time when a covered employee changes from nonexempt to exempt status through a personnel action such as a promotion or reassignment. If the exempt employee maintains a nonexempt compensatory time balance, the employee may be allowed to use the nonexempt compensatory time off or the Office of Public Instruction must pay cash for unused

nonexempt compensatory time upon termination of employment or transfer to another agency.

Effective:

Revision Effective: 3-02

23. PERFORMANCE EVALUATION

The performance of each full-time and part-time employee in a permanent position who has completed a probationary period shall be evaluated during established evaluation periods of not more than one year's duration.

The performance evaluation of an employee in a permanent position who has not completed a probationary period shall be completed before the end of the probationary period.

Performance evaluation is at the discretion of the immediate supervisor for employees in positions designated as seasonal or temporary, or for employees who work on an intermittent basis.

At the beginning of each evaluation period, the appraiser shall inform the employee of the duties, responsibilities, and performance standards to be evaluated.

Identifying duties and responsibilities and developing performance standards, including competencies, contributions and results to be achieved, may be done jointly with the employee or employees. The employee shall be given the opportunity to provide a self-assessment according to their current evaluation standards.

During the evaluation period, the appraiser shall observe the employee's performance on each specified performance standard and/or review reports, logs or other work samples. The appraiser should communicate with the employee on an ongoing basis regarding his/her performance.

At the end of the evaluation period the appraiser shall evaluate the employee's performance on each performance standard. The rating of performance shall take place no more than 60 calendar days after the close of the evaluation period, unless a new appraiser is appointed during that period. Where a new appraiser is appointed, management may extend the evaluation period. When an employee is given a new appraiser, the appraiser may either establish new performance standards and begin a new evaluation period or conduct the evaluation using pre-established standards.

A meeting shall be held privately with the employee to review the written evaluation. The employee shall be asked to sign a statement on the evaluation document indicating that it was reviewed with the employee. Where the employee refuses to sign, a witness, should sign and date the form. The employee must be given a copy of the completed evaluation and any related documents.

The employee shall be advised of the right to submit a written rebuttal to the evaluation. If the employee desires to submit a written statement in explanation or mitigation of any remark on the evaluation form, the statement shall be attached to the evaluation form in the personnel file. The statement shall be submitted within 10 working days of the evaluation meeting and signed and dated by the employee and by the immediate supervisor.

Informal or formal disciplinary actions initiated in accordance with the discipline handling policy are not dependent upon the performance evaluation process being completed. The employee may grieve adverse employment actions taken as a result of a performance evaluation in accordance with the union contract or through the OPI Grievance Policy and Procedure.

Effective:

Revision Effective: 3-02

24. PERSONAL TELEPHONE CALLS

State telephones and credit cards are provided for the conduct of state business.

Office of Public Instruction telephones and telephone credit cards for personal business are to be used for essential personal business only and use should be kept to a minimum. Personal long distance calls should be made as collect calls or charged to a personal credit card.

Essential personal business includes such items as local and long distance calls to latch-key children, teachers, doctors, day-care centers, babysitters, and family members where travel plans have changed or other work related requirements have changed personal arrangements.

Personal business conducted with state telecommunication systems must not interfere with the conduct of state business.

Effective:

Revision Effective: 3-02

25. PERSONNEL FILES AND EMPLOYEE RECORDS

DEFINITIONS

Access—means permission to view and use records.

Confidential records—means records concerning an employee to which there is restricted access.

Document—means an object upon which information is written, transcribed or recorded.

Employee personnel record—information relating to an employee's employment with the Office of Public Instruction. An employee record may be a paper document or it may be information maintained in an information system such as the Statewide Accounting Budgeting and Human Resources System (SABHRS).

Records—a body of recorded information. This information may be manually or electronically recorded and maintained.

TYPES OF RECORDS

Employee personnel records may include, but are not limited to:

- All copies of payroll status forms affecting employees' pay and/or status;
- W-4 forms;
- Employee leave record, sick leave fund vouchers, time and attendance reports which may be kept separately for ease of access combined with personnel file upon termination;
- Authorizations to deduct money from paycheck, such as health insurance premiums, credit union, savings bond and/or deferred compensation deductions, charitable contributions, etc.;
- Copy of designation of person authorized to receive decedent's warrants;
- Enrollment in health insurance plans;
- Longevity computation, certification form and documents; verification of previous employment which affects employee benefits; and
- Any other payroll and benefits information which is essential to agency operations;
- Performance evaluations;
- Disciplinary matters;
- Personal problems requiring employee assistance;
- State application and/or resume of employee, copies of professional licenses and certifications;
- Individual training records;
- Hiring records such as offer letters, acceptance letters, job posting, EEO status, I-9 forms, and a position description;

- Transfer, reassignment, promotion and demotion records, employee exchange or loan;
- Records pertaining to selection for training assignment or apprenticeship;
- Records pertaining to awards, commendations, or other positive reinforcement methods;
- Documents of separation such as letter of resignation or a copy of any agency termination form; or
- Any other personal employee information that is essential to agency operations.

ACCESS TO RECORDS

All employee personnel records are confidential except an employee's position title, dates and duration of employment and salary, which are public information and must be released on request. The Office of Public Instruction may not require justification for the request but may require that the request be in writing.

The Office of Public Instruction shall restrict access to confidential records to protect individual employee privacy.

All information collected in regard to medical examinations or inquiries must be treated as confidential medical records in compliance with the Americans with Disabilities Act (ADA) and must be collected and maintained on separate forms in separate files from employee personnel records. Access is restricted to supervisors and managers when identifying restrictions on an employee's work or duties or identifying necessary accommodations. Access by first aid and safety personnel is provided if the disability might require emergency treatment.

The following may have access to all employee personnel records: the employee; the direct supervisor; those persons above the direct supervisor in the direct line of authority including the division administrator, department director, or agency legal counsel; other supervisory personnel considering employee for employment; the authorized personnel or payroll technician/assistant; and the Personnel/EEO Officer. Access may be further restricted by an agency head or division administrator. Others may obtain access to confidential records only with the employee's informed and written permission or with a valid legal order. OPI will inform the employee when a valid legal order has been received requiring access to an employee's personnel records. Fees may be charged to copy such records.

No information reflecting critically upon an employee will be included in the employee personnel file without the signature of the supervisor and signature or initials of the employee or evidence from OPI that the employee was shown the material and refused to sign it. All rebuttals by the employee will be included with such records with the same signature requirements. An employee may file a written response to information contained in employee personnel records that becomes a permanent part of the record. The rebuttal or comments must be filed within 10 working days of the date on which an employee is made aware of the information by the department. (See OPI policies regarding Performance Appraisal, Grievance, and Discipline.)

Employee personnel records do not include documents, information or other evidence developed as part of an investigation. Access to such documents will be determined on a case-by-case basis, balancing the constitutional guarantees of Right to Privacy, Article II, section 10, and Right to Know, Article II, section 9, MT Constitution 1972.

AGENCY ACCESS

The Office of the Legislative Auditor has access to personnel records pursuant to 5-13-309, MCA, for purposes of auditing state agencies. The Human Rights Bureau shall have access to personnel files related to complaints of discrimination. The professional staff of the State Personnel Division shall have access to all personnel records directly related to the subject when providing technical assistance at the request of agency managers and Personnel Officers and when gathering summary data on personnel programs or systems.

File cabinets or other storage systems containing both active and inactive records should be kept locked at all possible times.

Effective:

Revision Effective: 3-02

26. PROBATION

DEFINITIONS

Employee—all Office of Public Instruction employees except those who are members of the superintendent's personal staff.

Permanent status—the status an employee attains after satisfactorily completing an appropriate probationary period in a permanent position.

Probationary period—a trial period established by the Office of Public Instruction when an employee is newly hired into a permanent position to assess the employee's abilities to perform job duties; to assess the employee's conduct on the job and to determine if the employee should be retained beyond the probationary period and attain permanent status.

Temporary position—a position created for a definite period of time not to exceed 12 months.

Transfer—a change of employment from a Montana state agency to the Office of Public Instruction without a break-in-service.

PROBATION POLICY

An employee attains permanent status after satisfactorily completing an appropriate probationary period in a permanent position. An employee in a temporary position or an employee temporarily hired into a permanent position for less than 12 months is not eligible to attain permanent status. Provisions of the discipline handling policy, the grievance policy, and the reduction-in-work force policy apply to an employee who has attained permanent status.

Employees newly hired into permanent positions within the Office of Public Instruction shall serve a six-month probationary period. During this probationary period, employees may be discharged at the discretion of management. The Office of Public Instruction shall inform the employee of the length of the probationary period. The Office of Public Instruction shall complete a performance appraisal for an employee in a permanent position prior to the end of a probationary period, in accordance with the performance appraisal policy.

An employee has satisfactorily completed a probationary period and attains permanent status when the employee has served the period of time established by the Office of Public Instruction and the employee does not receive notice of an extension of the probationary period within 15 working days prior to the end of the probationary period.

The Office of Public Instruction may extend the length of a probationary period to deal with special circumstances. When the probationary period is extended, the Office of Public Instruction must notify the employee in writing at least 15 working days prior to the end of the probationary period that the probationary period has been extended. Notice of extension of probation must include the length of the extension and the date probation will be completed. When a probationary period is extended, an employee does not attain permanent status until the

employee successfully completes the additional probationary period. The extension will not be for a period of more than 6 additional and consecutive calendar months. Extensions of the six-month probationary period for a bargaining unit member must have the written concurrence of the union.

When an employee who has attained permanent status is internally promoted or internally reassigned, the employee transfers the permanent status to the new position.

An employee who has attained permanent status in a state agency and transfers to the Office of Public Instruction retains permanent status.

Effective:

Revision Effective: 3-02

27. PROFESSIONAL MEMBERSHIPS

The Office of Public Instruction may purchase memberships in professional organizations for employees where the membership provides a direct benefit to the Office of Public Instruction.

Purchases of memberships in professional organizations should be made in the name of the Office of Public Instruction. The membership purchase should reflect that it is for the Office of Public Instruction.

The Office of Public Instruction will only pay for one membership in a professional organization. Exceptions may be granted by an Assistant or Deputy Superintendent.

Employees wishing to join a professional organization should make a written request to their immediate supervisor. The request should include a narrative explanation of the benefits that will result from membership.

The Office of Public Instruction will not pay for individual certifications and/or licensing fees required by an individual's vocation. It is the employee's responsibility to acquire and maintain the requirements of the position held. Professional licensing/certification fees include, for example, attorneys' annual licensing fee and teacher certification fees.

Effective:

Revision Effective: 3-02

28. REDUCTION IN FORCE

DEFINITIONS

Reduction in force—a management action taken for non-disciplinary reasons in which an employee is laid off from his/her present position. The lay off may take place for reasons including, but not limited to: elimination of programs; reduction in FTEs by the legislature; lack of work; lack of funds; expiration of grants; or reorganization.

Preference period—a period of one calendar year from the effective date of lay off.

Effective date of lay off—the date determined by the agency to be the end of employment for an employee, allowing adequate time for 20 working days advance notice of lay off.

Exempt employee—an employee who holds a position that is exempt from the overtime requirements of the Fair Labor Standards Act and is covered by the State of Montana classification system.

Non-exempt employee—an employee who holds a position which is not exempt from the overtime requirements of the Fair Labor Standards Act and is covered by the State of Montana classification system.

Termination date—the date the employee is actually removed from the payroll.

REDUCTION IN FORCE (RIF) POLICY

If it is necessary to achieve a reduction in the work force, consideration must be given to the programs to be carried out by the agency and the staff structure that, after the reduction, will most expeditiously achieve program objectives. Accordingly, employees will be retained giving consideration to the importance of the following qualities possessed by the work force: competencies and length of continuous service in the agency.

Management shall determine whether an employee has the competencies to perform a job. (Competencies mean knowledge, skills, abilities and behaviors.) In addition, consideration should be given to any or all of the following:

- Qualifications and experience to perform the duties of a specific position that will be retained.

- General competencies beneficial to future achievement of agency goals and objectives.

- The performance on specific, related tasks to those required by the position that will be retained.

- General performance history as determined by management.

For all employees, length of service will be the governing factor. The least senior employee in any program being reduced shall be laid off first until the required reduction is achieved. Such employees laid off may replace the least senior employee in any same or lower graded position in the agency for which the laid off employee has the necessary minimum competencies.

There are two distinct labor forces: permanent full-time and permanent part-time. One cannot bump the other.

An employee must be given written notice a minimum of 20 working days preceding the effective date of the lay off unless 25 or more employees are affected, at which time at least 60 days written notice will be given. An employee should be counseled as much in advance of the anticipated action as possible regarding available options and reasons for lay off.

The most senior employee on lay off status who possesses the competencies as discussed above will be offered open positions as they become available before less senior employees on lay off status. Any laid off employee who refuses a reinstatement offer to a position of the same or higher classification than the position the employee held when laid off will lose all Employee Protection Act rights.

The Office of Public Instruction will notify employees being recalled of available positions in writing by certified mail. If an employee fails to respond to the notice within 5 calendar days of receiving the notice, the employee will be considered to have forfeited his/her right to return to work. It shall be the employee's responsibility to keep the Office of Public Instruction notified of his/her current address.

All privileges and benefits extended by this rule cease at the end of the one-year preference period.

If the lay off is anticipated to last longer than 15 working days, the employee shall be terminated. The employee may choose one of the following options at the time of lay off.

- A. Cash out. An employee who is laid off may choose to be cashed out for all accrued leave at the termination date. The termination date is the date the employee is actually removed from the payroll.
- B. Retain leave credits. An employee who has been terminated due to RIF may retain accrued leave credits with the agency until the employee's Protection Act rights end.
- C. Use some or all accumulated annual leave credits to delay the employee's termination date. An employee, who chooses this option, may retain accumulated sick leave credits.
- D. If an employee is reemployed on a seasonal, temporary or short-term basis, leave credits do not transfer to that position and the employee cannot use those sick or annual leave credits. However, the employee begins earning additional sick and annual leave credits from the first day of seasonal or temporary employment. Once leave credits are earned, the employee may use them provided their use is approved by the employee's supervisor.

- E. The employee may elect to completely cash out sick and/or annual leave balances anytime. In all cases, an agency must cash out the employee's remaining sick and annual leave balances when the employee's Protection Act rights end. The employee is cashed out at the last salary rate earned.

Because lay off is a termination, the employee shall be given the OPI Grievance Policy within 7 days of termination.

An employee who is demoted as the result of a reduction in force, but who is not laid off, may, at the agency's discretion, receive up to a maximum of 180 days of salary protection, depending on budgetary constraints. An employee who was laid off and subsequently employed by a state agency will earn the same hourly salary as previously received if the new position is at the same grade as or higher than the one previously held. If an employee is hired at a grade lower than the one previously held, the employee's pay is set using Pay Plan Rule 1812, Demotions.

Accrued longevity increment hours are an exception. These hours and longevity pay are restored to a laid-off employee who is reemployed any time in the future unless they have refused to accept a reinstatement offer. This benefit is not limited to the period of Protection Act coverage. However, the time in lay off status does not count toward longevity increments.

In some cases, a demotion as a result of a reduction in force may be considered "exceptional circumstances" for purposes of a pay plan exception.

Lay off shall not be used as an alternative to discharging an employee for cause or disciplinary purposes. Unsatisfactory employees should be terminated subsequent to complete and appropriate evaluation, review and documentation. If an unsatisfactory employee is laid off without appropriate evaluation, review and documentation, the employee must be treated the same as any other laid-off employee.

(See also the State of Montana Reduction in Work Force Policy and Guide.)

Effective: 3-02

29. SEXUAL HARASSMENT

It is the policy of the Office of Public Instruction and the State of Montana that all employees have a right to work in an environment free from all forms of discrimination, including sexual harassment.

It should be understood that sexual harassment is against the law and the Office of Public Instruction is committed to the prevention of all forms of sexual harassment in the workplace. In addition, the State of Montana prohibits retaliation against any employee because he or she had made a report of alleged sexual harassment or against any employee who has testified, assisted, or participated in any manner in an investigation of a report.

Sexual harassment is generally defined as unwelcome sexual advances, requests for favors and other verbal, physical and/or visual contact of a sexual nature when:

- Submission is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission or rejection by an employee is used as a basis for employment decisions affecting the employee; or
- The conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creates an intimidating, hostile or otherwise offensive work environment.

The following are examples of sexual harassment:

- Sexual advances which are unwanted (this may include situations which began as reciprocal attractions, but later ceased to be reciprocal).
- Sexual gestures.
- Displaying sexually suggestive objects, pictures, cartoons or posters.
- Verbal abuse of a sexual nature, sexually-oriented jokes, innuendoes or obscenities. Sexually suggestive letters, notes or invitations.
- Reprisals or threats after a negative response to sexual advances.
- Employment benefits affected in exchange for sexual favors (may include situations where a third party is treated less favorably because others have agreed to sexual advances).
- Physical conduct such as assault, attempted rape, impending or blocking movement, or touching.
- Women or men in nontraditional work environments may also be subject to hazing (this may include being dared or asked to perform unsafe work practices).

Sexual harassment should be reported as soon as possible after the incident or action occurs. Early reporting is encouraged because management's ability to investigate and act on reports diminishes with time. If an employee feels they are being sexually harassed, they should take the following steps:

- Inform the individual that his/her behavior is unwelcome, offensive or inappropriate. Do not assume or hope that the problem will go away.
- If you are unable to confront the harasser or the harassment continues, notify your supervisor, the next level supervisor who is not involved in the alleged harassment, or the OPI's Personnel Office.
- Keep notes. Keep a record of the dates, times, places, witnesses and describe each incident. Save all notes, correspondence or related records in a safe place.

If you are considering reporting a complaint, you can:

1. Use the reporting procedures contained in OPI's EEO-Nondiscrimination Complaint Resolution Procedure in Attachment 29-A or contact the OPI Personnel Office.
2. File a complaint with the Human Rights Commission. Complaints with the Human Rights Commission will be accepted within 180 days of the act, or an extended 120 days if you are using an internal complaint procedure.

If you are not personally a victim of sexual harassment but observe actions against other employees which you believe to be harassment, you are encouraged to bring it to the attention of your supervisor and the OPI Personnel Office.

Effective:

Revision Effective: 3-02

ATTACHMENT 29

SEXUAL HARASSMENT

- Attachment 29-A, Complaint Resolution Procedure

OPI
EQUAL EMPLOYMENT OPPORTUNITY – NONDISCRIMINATION
COMPLAINT RESOLUTION PROCEDURE

The Office of Public Instruction (OPI) is an equal employment opportunity employer and prohibits discrimination based on race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation or political beliefs unless based on a bona fide occupational qualification (BFOQ). The State also prohibits discrimination in providing services, activities and programs unless providing a reasonable accommodation or reasonable modification would cause an undue hardship.

The OPI is committed to resolving complaints of discrimination in a fair and timely manner. The complaint resolution procedure is a dispute resolution process used when an applicant, client, customer or employee alleges that discrimination has taken place. Management must investigate when reports are received. Complaints concerning disability discrimination are submitted to the agency Americans with Disabilities Act (ADA) Coordinator. All other complaints are submitted to the agency Equal Employment Opportunity (EEO) Officer.

Complainant's Responsibility:

Any applicant, client, customer, or employee who believes he or she or another person has been subjected to a discrimination of the equal employment opportunity policy is encouraged to report the incident(s) or action(s) to management as soon as possible after the alleged discrimination occurs. Early reporting is encouraged, because management's ability to investigate and act on reports diminishes with time.

Management's Responsibility

- (1) Any supervisor who receives a report of an alleged discrimination shall immediately notify the agency EEO Officer or ADA Coordinator.
- (2) Upon receipt of a report alleging discrimination, including sexual harassment, the agency shall take all appropriate steps to prevent the alleged conduct from continuing pending completion of the investigation. The agency will determine the steps to be taken by balancing the rights of the alleged victim, including the severity of the alleged conduct, and the rights of the alleged harasser.
- (3) The EEO Officer or ADA Coordinator shall initiate an investigation or select another appropriate management representative to initiate the investigation no later than 10 working days after receiving notice of the alleged discrimination. The investigation shall include verification of the report, a recommended course of action, and written documentation of the investigation. The investigator shall submit the results of the investigation to department or agency Personnel Officer. The factual report shall remain confidential and may not be disseminated except to persons having a need or right to know which outweighs the privacy rights of the persons involved.
- (4) Within 5 working days of receiving the investigator's factual report, the agency will, in writing, inform the complainant, any employees directly involved, their immediate

supervisors, and the EEO Officer or ADA Coordinator of the results of the investigation and the agency's decision.

- (5) If the investigation establishes that there is insufficient evidence to find that illegal discrimination occurred, the agency will inform all parties involved that no action will be taken. If the investigation establishes that discrimination occurred, the agency will take appropriate action, including, but not limited to, disciplinary measures pursuant to the agency's disciplinary policy, which may include termination. The agency will, in writing, inform the complainant only that an action was taken, not the details of the action.
- (6) Neither the agency management nor any employee will retaliate against any employee for filing a discrimination complaint or for participating in any way in a complaint procedure.

OTHER COMPLAINT FILING OPTION (1) An applicant, client, customer, or employee may concurrently file a complaint of unlawful discrimination with the Human Rights Bureau (PO Box 1728, Helena, MT 59624-1728, phone 1-800-542-0807.) The complaint must be filed either:

- (a) within 180 days of the alleged incident; or
- (c) if the employee initiates action to resolve the alleged discrimination in accordance with this procedure or contract grievance procedure, within 300 days of the alleged incident.

30. SICK LEAVE

DEFINITIONS

Abuse of sick leave—misrepresentation of the actual reason for charging an absence to sick leave may include chronic, persistent, or patterned use of sick leave.

Break in service—a period of time in excess of 5 working days that an employee is not employed and that severs continuous employment. A break in service could result from a termination, resignation or an absence of more than 5 working days in a row without an approved leave. An approved continuous leave of absence without pay exceeding 15 working days does not constitute a break in service.

Continuous employment—working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

Immediate family—the employee's spouse and any member of the employee's household, or any parent, child, grandparent, grandchild, or corresponding in-law.

Jurisdiction—State government is a single jurisdiction.

Qualifying period—a 90-calendar day period an employee must be continuously employed to be eligible to use sick leave credits or to be eligible for a lump sum payment upon termination for unused sick leave credits.

Sick leave—a leave of absence with pay for a sickness suffered by an employee or his/her immediate family or for parental leave.

Sick leave credits—the earned number of sick leave hours an employee is eligible to use upon completion of the qualifying period.

Transfer—a change of employment from one State agency to the Office of Public Instruction without a break in service.

SICK LEAVE POLICY

An employee may use sick leave credits for:

- illness;
- injury;
- medical disability;
- maternity-related disability including prenatal care, birth, miscarriage, abortion, or other medical care for either employee or child;
- quarantine resulting from exposure to contagious disease;
- medical, dental or eye examination or treatment;

- necessary care of or attendance to an immediate family member, or at the agency's discretion, another relative, for the above reasons until other attendance can reasonably be obtained; and
- death or funeral attendance for an immediate family member or, at the agency's discretion, for another person.

ACCRUAL OF SICK LEAVE CREDITS

All employees serving in positions that are permanent full-time or part-time, temporary, seasonal, or job share are eligible to earn sick leave credits. Sick leave credits accrue from the first day of employment.

An employee must be continuously employed for the qualifying period of 90 calendar days to use sick leave. Leave may not be advanced nor may leave be taken retroactively. Unless there is a break in service, an employee only serves the qualifying period once. After a break in service, an employee must again complete the qualifying period to use sick leave.

Hours in a pay status paid at the regular rate will be used to calculate leave accrual. Sick leave credits will not accrue for those hours exceeding 40 hours in a work-week that are paid as overtime hours or are recorded as compensatory hours. A full-time employee shall not earn less than or more than the full-time sick leave accrual rate. An employee may not accrue sick leave credits while in a leave without pay status.

When an employee who has not worked the qualifying period for use of sick leave takes an approved continuous leave of absence without pay exceeding 15 working days, the amount of time on leave of absence will not count toward completion of the qualifying period. The approved leave of absence exceeding 15 working days is not a break in service and the employee will not lose accrued sick leave credits or lose credit for time previously earned toward the qualifying period. An approved continuous leave of absence without pay of 15 working days or less will be counted as time earned toward the 90-day qualifying period.

When an employee has been laid off, the employee may choose to cash out or retain their accrued sick leave credits. The employee may use those sick leave credits if reinstated or reemployed during the RIF preference period. Sick leave credits must be cashed out at the end of the employee's Protection Act preference period if they haven't been reinstated or reemployed.

CALCULATION OF SICK LEAVE CREDITS

Sick leave credits are earned at the rate of 12 working days for each year of service for full-time employees and are prorated for part-time employees.

If an employee is regularly scheduled to work 80 hours or more in a bi-weekly period, the employee accrues 3.69 hours of sick leave credits per pay period. If the employee is regularly scheduled to work less than 80 hours in a bi-weekly pay period, the employee accrues .046 hours of sick leave credits for each hour worked. Sick leave credits are earned at the end of each bi-

weekly pay period. These sick leave credits may not be used until the start of the next bi-weekly pay period.

There is no restriction as to the number of hours of sick leave credits that may be accumulated, nor to the number of accrued sick leave credits that may be used for a bona fide employee illness or disability, provided that the qualifying period has been completed.

SICK LEAVE REQUESTS

In circumstances where the employee is aware that sick leave will be taken, requests for leave will be made in writing and given to the employee's immediate supervisor. In these situations, the written request should include a brief statement explaining the need to use sick leave and the approximate dates sick leave will be taken.

In circumstances where the need for sick leave was not anticipated, the employee should contact the employee's supervisor as soon as is reasonably possible. If the immediate supervisor is not available, the next supervisor in the chain of command should be notified.

The employee's immediate supervisor or appropriate authority may require medical certification of the need for sick leave taken. The medical certification shall be provided by a licensed physician or a licensed practitioner competent to treat and diagnose the particular illness or condition. A statement by a licensed physician or, at the agency's discretion, by a licensed practitioner, may also be required to certify that the illness of a family member requires the immediate supervision of the employee. The Office of Public Instruction may require an employee to be examined by a licensed physician or a licensed practitioner of the Office of Public Instruction's choice. The agency shall pay the cost of such an examination.

PAYMENT UPON TERMINATION

When an employee terminates employment with an agency, the employee is entitled to cash compensation for unused sick leave credits equal to one-fourth of the compensation the employee would have received if the employee had used the credits, provided the employee has worked the qualifying period. The value of unused sick leave is computed based on the employee's salary rate at the time of termination.

If an employee transfers to another State agency, the employee shall not receive cash compensation for unused sick leave credits. The receiving agency will assume the accrued sick leave credits.

ABUSE OF SICK LEAVE

Misrepresentation of the actual reason for charging an absence to sick leave is cause for dismissal and forfeiture of the lump-sum payment. Chronic, persistent, or patterned use of sick leave may be subject to progressive discipline. Absences improperly charged to sick leave may, at the discretion of the Office of Public Instruction, be charged to available compensatory time or leave without pay. Annual leave may be used at the mutual agreement of the employee and the

agency. Any charges of sick leave abuse that result in an employee's dismissal and forfeiture of the lump-sum payment are subject to the appropriate grievance procedure.

SUBSTITUTION OF SICK LEAVE FOR ANNUAL LEAVE

An employee who makes an appropriate use of sick leave as defined in this policy, while taking approved annual vacation leave, may be allowed to substitute accrued sick leave credits for annual leave credits.

SICK LEAVE ON HOLIDAYS

Sick leave may not be taken on a paid holiday.

Effective:

Revision Effective: 3-02

31. SMOKING PROHIBITION

All state owned buildings and the portions of buildings leased by the state are to be smoke free.

Effective: 7-01

32. TEMPORARY AND SHORT-TERM POSITIONS

DEFINITIONS

Short-term worker position—need not be classified nor filled by a competitive selection process; preferences do not apply nor is Job Registry contact necessary; may use term contract.

Short-term worker—an individual hired for a period of time not to exceed 90 days in a continuous 12-month period; is hired for an hourly wage for any type of work; does not qualify for permanent status without a competitive selection process; does not qualify to earn or use sick or annual leave, holiday pay, group insurance or retirement plan participation; is not eligible for preferences; time does not count toward longevity; must compete for permanent, temporary or seasonal positions as an external candidate.

Temporary position—a position that is needed for a limited period of time, not to exceed 12 months.

Temporary employee—an individual hired for a period of time not to exceed 12 months; is not eligible for permanent status without a successful completion of a competitive selection process; is not eligible to file a grievance; receives holiday pay; eligible for military leave upon completion of qualifying period; accrues sick and annual leave and has rights to take and cash out accrued leave upon completion of qualifying periods; may be eligible for veterans preference and may be eligible for group benefits plan and the retirement system.

Temporary pool—a pool of individuals who have applied for temporary positions with the Office of Public Instruction.

TEMPORARY AND SHORT-TERM POSITIONS

From time to time the Office of Public Instruction has a need for employees on a temporary or short-term basis to assist with specific projects or to fill in for staff members who are on leave. Temporary or short-term employees are hired by supervisors completing the OPI Recruitment Form and submitting it to the OPI Personnel Office.

Temporary employees may not be hired for more than 12 months and short-term workers for more than 90 days. The employee should be paid in accordance with the duties to be performed. If a temporary or short-term employee is hired to fill in for an employee on leave, he or she should receive pay equivalent to the entry level salary of the grade of the position held by the permanent employee unless they do not meet full qualifications.

The unclassified short-term worker should receive salary of a similar classified position taking into account special expertise, need to meet critical deadlines or an emergency situation.

Whenever possible, temporary employees will be selected through a competitive process. This is not required for short-term workers. Toward that end, the Personnel Officer will maintain a pool of individuals who have applied for temporary positions with the Office of Public Instruction.

Individuals in the temporary pool will be ranked according to their competencies. The Personnel Officer will call the first person on the list and make an offer of employment. If the first person is not available, the second person will be called and so on until an individual is found for the position.

For positions which cannot be filled by a temporary pool because of the specific nature of the duties of the job, the immediate supervisor will consult with the Personnel Officer or procurement staff regarding options for recruiting a temporary employee or short-term worker.

Effective:

Revision Effective: 3-02

33. TERMINATION-INVOLUNTARY

A permanent employee shall not be discharged involuntarily until a pre-termination review has been conducted to determine if there are reasonable grounds to believe the allegations against the employee are true and that the allegations support the discharge decision.

The Personnel Officer (or designee) will conduct a review to determine whether there are reasonable grounds to proceed with the decision to terminate an employee. The reviewer will not be a supervisor in the direct line of supervision of the employee.

The review should provide the following for the employee:

- Notice of the allegations supporting the recommended discharge action

- Notice of the substance of the relevant evidence supporting the allegations

- An opportunity to submit a written response

- An opportunity to meet with a review panel

- An opportunity to present statements from rebuttal witnesses

Upon completion of a pre-termination review, the reviewer will provide a written report of his or her findings to the Personnel Officer. The Personnel Officer will meet with management and review the report. After review of the report, management shall decide whether or not the decision to discharge is supported.

In the event management proceeds with the discharge, management shall follow all applicable provisions of the Office of Public Instruction Discipline and Grievance Policies.

At the time the discharge becomes effective, management shall inform the employee of the right to a post-termination hearing provided in the Grievance Policy and be given a copy of that policy.

(See also the OPI Discipline Policy, Grievance Policy and Procedures, and the state Discipline Handling Guide.)

Effective:

Revision Effective: 3-02

34. TRAVEL

ACCOUNTABILITY

The legislature establishes laws governing employee and non-employee travel and State agency purchases, and the Department of Administration prescribes the regulations and rules to implement those laws. Employees of the Office of Public Instruction are responsible for knowing, understanding and complying with State and federal regulations, including but not limited to, those published in MCA, Administrative Rule, Montana Operations Manuals, EDGAR, OMB Circular A-87 and applicable grant/subgrant agreements.

Employees are accountable to the OPI, the State of Montana and, in some cases, the Federal government for work-related purchases.

Supervisors are responsible to review claims, make sure the program budget can afford it, and ensure it is legal and of reasonable appearance. The supervisor's approval doesn't relieve the originator of any financial responsibility if the claim is subsequently not reimbursed.

APPEARANCE

The public has a right to expect that state employees are not extravagant in claiming expenses or in reimbursing the expenses of others. Reimbursement for drinks and entertainment are prohibited by federal regulation. It is expected that major purchases such as desks and chairs, are made at reasonable prices. The business public expects a competitive opportunity for OPI business (competitive bids) and the sale if they are successful bidders (purchases made on the state term contract).

TRAVEL CLAIMS

An employee's travel claim must be submitted, with the supervisor's approval, no later than 5:00 p.m. on payday (every other Wednesday) in order to be reimbursed on the following payday. All travel claims must be submitted in electronic format to the payroll clerk.

Claims for travel expenses incurred within a given fiscal year, must be submitted for reimbursement within 10 days after the end of that year.

An employee who does not file for reimbursement of travel costs within 3 months after incurring the expense waives the right to reimbursement (MOM 1-0370.30).

THIRD PARTY REIMBURSEMENTS

If another state or organization is willing to pay travel cost(s) for a state employee, the Office of Public Instruction may contribute the employee's personal service cost to the project (MOM 1-0380.00).

When a third-party agrees to reimburse an OPI employee for travel expenses, the employee has two options:

1. Indicate on a Trip Approval and Advance Request Form that OPI will be reimbursed for all or part of the costs associated with your trip. Following the trip, submit the travel claim to OPI and, whenever possible, attach a copy of the reimbursement request that was submitted to the third-party. Payment should be made to the Office of Public Instruction using OPI's tax ID number (#81-6001698), not the employee's name and social security number.

-OR-

2. Indicate on a Trip Approval and Advance Request Form that the employee will be personally reimbursed for all or part of the costs associated with the trip. The employee is then responsible for paying the expenses that will later be reimbursed; the employee should not request a travel advance or submit a travel claim to OPI for these costs. Payment should be made using the employee's name and social security number.
Adopted 3/14/96

MEALS

To be eligible for the meal allowance provided in law, an employee must have been in a travel status for more than 3 continuous hours and be a distance of at least 15 miles from headquarters or home, whichever is closer (2-18-502, MCA; MOM 1-0320.00).

The reimbursement rates of meals are provided in 2-18-502, MCA.

No reimbursement may be claimed when meals are provided to an employee, but the employee is not charged directly, such as when the cost of the meal is included in a registration fee.

If approved in advance by their supervisor, OPI employees attending an OPI-sponsored conference in Helena may participate in the luncheon, if lunch is provided to all conference participants.

Whenever OPI funds are used to buy a meal for individuals that are not OPI employees (i.e., workshop presenters/participants, contractors, task force members, meeting attendees, etc.), the cost per meal is limited to the state meal rates in 2-18-502, MCA, and is to be paid as a reimbursement, based on a claim submitted to OPI by the non-employee and approved by the responsible OPI employee. There may be times when no establishment will provide a meal at or below state rate, and/or times when the claim approach to reimbursement is not practical. Exceptions for these situations must be approved in advance by a Division Administrator or their supervisor.

LODGING

The reimbursement rates for receiptable and nonreceiptable lodging are given in 2-18-501, MCA.

In some instances, lodging is provided to the employee but no charge is assessed directly. For these instances, lodging expense cannot be claimed by the employee. Examples of this are:

- (a) industry or government seminars where lodging is provided on campus'
- (b) lodging is included in the registration fee (MOM 1-0330.20).

If traveling with a non-state employee spouse, the lodging rate claimed must reflect only the rate for one person. The single-occupant rate should be noted and marked as such on the receipt (MOM 1-0330.00).

Employees will be reimbursed for their actual out of pocket lodging expenses, including room tax, up to the maximum amounts set by Section 2-18-501, MCA. The Department of Administration is authorized to designate the locations and circumstances under which the employee may claim the actual cost of lodging when the actual cost exceeds the maximum lodging reimbursement rates established in Section 2-18-501, MCA.

In order to claim lodging reimbursement, employees must attach the original receipt from a licensed lodging facility to the OPI travel claim. Other receipts such as credit card receipts are not acceptable.

Whenever OPI funds are used to pay lodging expenses for an individual that is not an OPI employee (i.e., workshop presenter, contractor, workshop/meeting participant, etc.), the cost of the lodging is limited to the state rates in 2-18-501, MCA, and is to be paid through the reimbursement process, based on a claim submitted to OPI by the non-employee and approved by the responsible OPI employee. OPI will not cover room charges for a spouse if the spouse is not also an OPI employee and a meeting/workshop participant.

Room guarantees must be made using an employee's personal credit card or by prepaying for the room. If an employee has a permanent travel advance, the prepayment must be made by the employee from their advance funds.

Employees' lodging costs will be reimbursed based on a claim submitted by the employee and approved by their supervisor, and never billed directly to OPI by the lodging establishment.

MILEAGE

The rates of reimbursement for mileage for state and privately owned vehicles are described in 2-18-503, MCA.

An employee may wish to use other than the most economical and expeditious mode of transportation to complete a travel-oriented work assignment. For example, if an employee is required to attend a conference in Seattle. Rather than fly, the employee is authorized to drive in

their private vehicle. To accommodate the employee, it is permissible in this example to allow air travel equivalent' that is, the cost of the plane fare (at advance purchase price) and travel time to the extent it would take to fly. The remaining travel time required to drive would have to be completed on the employee's time (completed during non-working hours or charged against accumulated vacation or compensating overtime balances). Applicable claims are to be clearly marked in-lieu allowance and the underlying details fully explained (MOM 1-0310.30).

The State Superintendent has authorized OPI employees to use their personal vehicle when traveling on State business; however, a supervisor may still require his/her staff to use a state car. Since the motor pool's per/mile rates are generally less than the personal vehicle reimbursement rates set forth in 2-18-503, MCA, employees are strongly encouraged to use a state car. Permission to use your personal vehicle is a privilege that, if abused, may be taken away.

Employees that choose to take their personal vehicle when traveling on OPI business may claim mileage for the city-to-city miles reported on an official State of Montana Highway map, plus up to 10 additional miles per day.

MISCELLANEOUS EXPENSES

Miscellaneous business expenses associated with travel are reimbursable. Individual expense items of \$10 or more must be supported by paid receipts. Telephone calls are reimbursable only if made for business purposes. Tips and taxes on meals and tips on lodging are not reimbursable (MOM ARM 2.4.141).

Taxi fare for travel to/from the airport and hotel, and to/from your hotel and meeting, is reimbursable. However, taxi fare for travel to/from restaurants, entertainment and shopping areas is not reimbursable.

Working supplies and equipment are to be purchased/rented by an employee in travel status only on an emergency basis. Employees are expected to plan ahead for out-of-town trips and get necessary supplies from Central Stores, not purchase them in their destination city. Employees in a travel status should never purchase or rent equipment that's available in the office without adequate justification (e.g., OPI's VCR isn't working).

PAYMENT FOR TRAVEL AND TRAVEL TIME

1. Employees are expected to travel in an efficient and cost-effective manner:
 - a. Employees are encouraged to car pool to training and conferences to save funds. Supervisors can allow employees to take multiple vehicles if a legitimate reason is presented;
 - b. OPI employees are authorized to use their personal vehicle when traveling on State business. However, a supervisor may still require his/her staff to use a state car. Since the motor pool's per/mile rates are generally less than the personal vehicle reimbursement rates set forth in 2-18-503, MCA, employees are strongly encouraged

to use a state car. Permission to use your personal vehicle is a privilege that, if abused, may be taken away. Employees that choose to take their personal vehicle when traveling on State business may claim mileage for the city-to-city miles reported on an official State of Montana Highway map, plus up to 10 additional miles per day.

- c. Employees are required to have prior approval for rental car expenses from the division administrator or his/her designee; and,
- d. Employees are encouraged to schedule out-of-state training in a cost-effective manner. If airfare is cheaper with a Saturday stay, an employee may opt to stay the additional day. The employee must assess the cost of additional lodging and per diem costs to ensure that the additional day is cost-effective. The agency will not pay the employee salary for the additional day if the employee has opted to stay and is not performing work-related duties.

2. Employees will be compensated for time in travel status as follows:

- a. Employees will be compensated for all hours in a work status. This includes hours at training or conferences, travel time (including time spent in wait for transportation at a bus depot, train station or airport) and during the performance of work-related activities. Employees will not be compensated for leisure activities, additional days at the travel location when the employee is not working, and social activities related to the conference or training.
- b. If employees opt to remain in a location for additional days to lower transportation costs, the agency will pay per diem and hotel expenses provided that the cost of the additional stay does not exceed the savings in transportation costs.
(Above Section Effective 2/16/02)

FEDERAL REGULATIONS

Federal regulations governing employee travel costs and purchases, as a general rule, parallel state regulations, but federal regulations can be more restrictive. Travel/purchasing policies and procedures must be consistently applied to all OPI activities, regardless of funding source. Specific information regarding federal regulations is fully described in OMB Circular A-87.

In order to be considered an “allowable cost” of a federal program, such cost must be necessary for the efficient conduct of a program, reasonable, and not otherwise restricted by statute or regulation.

Generally, the following are considered “unallowable costs” of federally funded programs—

- Alcoholic beverages/bartender fees
- Bad debts

- Entertainment costs, including amusement, diversion, social activities and any costs directly associated with such costs, such as tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation and gratuities
- Lobbying costs, including the cost of membership in civic, community and social organizations that are substantially engaged in lobbying activities
- Contributions and donations to others
- Fines and penalties
- Interest
- Pre-agreement costs, unless approved by the sponsoring federal agency
- Fund raising

MEETINGS & CONFERENCES

The cost of technical meetings, and the cost of conferences when their primary purpose is dissemination of technical information, are allowable costs of State and Federal funded programs. This includes costs for meals, transportation, facilities, and other items incidental to such meetings or conferences, such as service charges (OMB A-87).

Employees are discouraged from holding meetings/conferences in locations the public may consider “extravagant,” unless it can be clearly documented that the cost of such location is comparable to other possible locations. Reasonable cost, in relation to OMB A-87, means reasonable in relation to other Montana facilities.

If non-employees attending an OPI meeting or conference are reimbursed for their travel expenses, the reimbursement for meals, lodging and mileage is limited to state rates.

To be reimbursed for travel expenses to an OPI sponsored conference/meeting, each attendee must complete a claim form and attach their lodging receipt. There may be times when the claim approach to reimbursement is not practical. These exceptions must be approved in advance by the Division Administrator or their supervisor and a single bill submitted to OPI by the meal/lodging establishment.

When meals are provided to participants at an OPI-sponsored meeting or conference and the establishment charges a lump-sum for the meal, including a service charge, every effort should be made to keep the meal cost per attendee as close to the state rate as possible. In no case should alcohol or entertainment costs be included in the bill or ordered at OPI expense. There may be times when meals can’t be purchased at the state rate. These exceptions to policy must be approved in advance by the Division Administrator or their supervisor.

Employees must get bids, either in writing or via the telephone, from at least three possible sites for an OPI-sponsored meeting/conference and select the site that offers the most benefit for the least cost. Bids taken via the telephone must be documented by the individual taking the call.

TRAVEL REIMBURSEMENT QUESTIONS & ANSWERS

1. What do I do if planning a meal for a conference or working group and I can't get anyone to provide it at state rates?

Generally, when OPI funds are used to buy a meal for individuals that are not OPI employees, the per meal cost is limited to the state meal rates in 2-18-502, MCA, and is paid as a reimbursement based on a claim submitted to our office by the non-employee and approved by the appropriate OPI employee. The meal cost over and above state rate is paid by the non-employee.

When a meal is provided to a large number of participants at an OPI-sponsored conference and the establishment charges a lump-sum for the meal, including a service charge, every effort should be made to keep the cost per attendee as close to the state rate as possible. In this case, the meal cost over and above the state rate will be paid by OPI if approved in advance by the Division Administrator or their supervisor.

2. What can be done if a food provider insists on a gratuity in addition to the meal cost?

Tips on meals are not reimbursable to OPI employees. Incidental costs of technical meetings and conferences, including service charges, are an allowable cost of state and federal programs.

3. If I am in travel status and have ordered a meal to go to eat in the car, is it allowable to claim compensatory time and the evening meal allowance?

Yes, provided you meet the applicable criteria to be considered eligible for both the meal reimbursement and the compensatory time.

4. If am part of a group that has a working luncheon in Helena, must I pay my own luncheon costs even if other members of the group do not?

When the majority of participants at a luncheon meeting in or near Helena are not OPI employees and lunch is provided at office expense, it must be provided for both the non-employees and the OPI employees in attendance.

(Revised 10/16/00)

5. If I am out of state and have taxi costs to get to an eating place, are these reimbursable costs?

Taxi fare for travel to or from restaurants and shopping areas is not reimbursable.

6. Are the costs of a reception held in conjunction with a conference or meeting allowable (i.e., hors d'oeuvres, pop, liquor, reception labor)?

If the reception is held primarily for entertainment purposes, the cost may not be paid using state or federal funds. However, if held for the primary purpose of disseminating technical information, the cost of reception, excluding the cost of liquor, is an allowable cost of state and federal funded programs. Adequate records must be maintained to document that the primary purpose of the reception was for dissemination of technical information or to otherwise promote the objectives of the program charged.

7. If a meal is included in a conference fee, is the per diem for that meal still paid to me?

Reimbursement may not be claimed when meals are provided to an employee but the employee is not charged directly, such as when the cost of the meal is included in a registration fee. This is true even if the employee elects not to eat the meal provided because of special dietary or other reasons.

8. If the cost of a conference meal (i.e., award banquet, advisor luncheon) exceeds state rates, is the difference between the cost and the state rate reimbursable? Is the answer to this question different if my attendance at the event is required by my supervisor?

State law limits the meal reimbursement paid to OPI employees in a travel status, regardless of the employee's actual out-of-pocket meal costs, and regardless of whether attendance is a requirement of your position.

9. Are costs associated with chaperoning student activities (i.e., gate fees) reimbursable?

Such costs may not be paid with federal funds unless approved in writing, in advance, by the awarding federal agency, and should not be paid with state funds in any case.

10. If a lodging facility serves a complimentary continental breakfast to guests, can I still claim the reimbursement for breakfast?

Yes. Since most complimentary continental breakfasts do not constitute a "meal," an employee may still file a reimbursement claim for breakfast.

11. If I have to attend another business meeting at the time a luncheon included in my registration fee is served, can I claim the reimbursement for lunch?

Yes. Employees that, for business reasons, can't participate in a conference luncheon, the cost of which is included in their registration fee, may still file a reimbursement claim for their lunch. Include a brief explanation of why you are entitled to the lunch reimbursement in the comments section of your travel claim.

Effective:

Revision Effective: 3-02

35. VACATION LEAVE

DEFINITIONS

Break in service—a period of time in excess of 5 working days when the person is not employed and that severs continuous employment. A break in service could result from a termination or resignation or could be an absence of more than 5 consecutive working days without approved leave.

Continuous employment—working without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days. An approved continuous leave of absence without pay exceeding 15 working days does not constitute a break in service.

Jurisdiction—State government is a single jurisdiction.

Qualifying period—a 6 month period an employee must be continuously employed to be eligible to use vacation leave credits or to be eligible for a lump-sum payment upon termination for unused vacation leave credits.

Transfer—a change of employment from another state agency to the Office of Public Instruction without a break in service.

Vacation leave—a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the Office of Public Instruction.

Vacation leave credits—the earned number of vacation hours an employee is eligible to use upon completion of the qualifying period.

ACCRUAL AND ELIGIBILITY TO USE VACATION LEAVE CREDITS

All employees serving in positions which are permanent, temporary, or seasonal are eligible to earn vacation leave credits. A short-term worker does not earn leave or time toward the rate earned.

An employee must be continuously employed for the qualifying period of 6 calendar months to be eligible to use vacation leave. Unless there is a break in service, an employee is only required to serve the qualifying period once. After a break in service, an employee must again complete the qualifying period to be eligible to use annual vacation leave.

Annual vacation leave credits accrue from the first day of employment. Leave credits may not be advanced nor may leave be taken retroactively.

Hours in a pay status paid at the regular rate will be used to calculate leave accrual. Vacation leave credits will not accrue for those hours exceeding 40 hours in a workweek that are paid as

overtime hours or are recorded as compensatory time hours. An employee does not accrue annual vacation leave credits while in a leave-without-pay status.

Where an employee who has not worked the qualifying period for use of annual vacation leave takes an approved continuous leave of absence without pay exceeding 15 working days, the amount of time on leave of absence will not count toward completion of the qualifying period. The leave of absence exceeding 15 working days is not a break in service and the employee will not lose any accrued annual leave credits or lose credit for time earned toward the qualifying period. An approved continuous leave of absence without pay of 15 working days or less will be counted as time earned toward the 6 month qualifying period.

Where an employee has been laid off, the employee may choose to cash out or retain their accrued annual leave credits. The employee may use those annual leave credits if reinstated or reemployed during the RIF preference period. If the employee is not reinstated or reemployed during the RIF preference period, the employee must be cashed out for unused annual leave credits.

CALCULATING ANNUAL LEAVE CREDITS

Vacation leave credits are earned at a yearly rate calculated in accordance with the following schedule, which applies to the total years of an employee's employment with any State agency, whether the employment is continuous or not.

RATE EARNED SCHEDULE

Years of Employment	Working Days Credit per Year
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years on	24

Time as an elected state, county or city official, as a school teacher, as an independent contractor or personal services contractor does not count toward the rate earned. For purposes of this paragraph, an employee of a school district, the university system, or any agency as defined in 2-18-601 MCA is eligible to have that employment time count toward the rate earned schedule if that employee was eligible for annual leave pursuant to 2-18-601, MCA, in the previous position.

BI-WEEKLY ACCRUAL SCHEDULES

Where an employee is paid through the state central payroll division, if the employee is in a pay status at least 80 hours or more in a bi-weekly pay period, the employee accrues the number of hours of vacation leave credits indicated in the following schedule:

FULL-TIME BI-WEEKLY PAY PERIOD SCHEDULE

No. of Completed Years of Employment	80 hours or more in pay status per pay period
0-10 years	4.62 hours
10-15 years	5.54 hours
15-20 years	6.46 hours
20 on	7.38 hours

PART-TIME BI-WEEKLY ACCRUAL SCHEDULE

If an employee is in a pay status less than 80 hours in a bi-weekly pay period or works on an intermittent basis, the employee accrues the number of hours of vacation leave credits calculated by using the applicable amount from the following schedule multiplied by the hours worked:

PART-TIME BI-WEEKLY PAY PERIOD SCHEDULE

No. of Completed Years of Employment	Less than 80 hours in pay status per pay period
0-10 years	.058 x no. hours
10-15 years	.069 x no. hours
15-20 years	.081 x no. hours
20 on	.092 x no. hours

Vacation leave credits are earned at the end of each bi-weekly pay period. An employee may take vacation leave credits at the start of the next bi-weekly pay period, provided the employee has worked the qualifying period of 6 calendar months to be eligible to take leave or receive cash compensation upon termination.

MAXIMUM VACATION CREDIT ACCRUAL

All full-time and part-time employees serving in permanent and seasonal positions may accumulate two times the total number of annual leave credits they are eligible to earn per year, according to the rate earned schedule. Excess vacation leave credits will be forfeited unless taken by the employee within 90 calendar days from the last day of the calendar year in which the excess credits were earned. The calculation of excess vacation leave credits (those credits which must be used within the first 90 days of the next calendar year) will be made as of the end of the first pay period which extends into the next calendar year. The supervisor may approve all, some or none of the employee's request by written response within no more than 5 working days from the receipt of the request. If the original request is not approved, the supervisor and the employee may negotiate alternate leave dates during the 90-day window.

For purposes of this section, reasonable means sufficient notice to take the excess vacation leave off before the forfeiture deadline. If the supervisor denies all or any portion of the written

request, the excess vacation leave is not forfeited and the employing agency must ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited.

VACATION LEAVE REQUESTS

All vacation leave requests shall be made in writing to the employee's supervisor. The request shall include the dates of the proposed leave. Requests to use vacation leave should be made as far in advance as is reasonably possible. If a supervisor denies an employee request to use vacation leave the supervisor will give the employee a written explanation of the reasons the vacation request is denied.

The Office of Public Instruction may refuse to approve annual leave which results in a total of more than 40 hours in a pay status in a workweek.

Also, when it is in the best interest of the agency, the Office of Public Instruction may approve annual leave in combination with time worked which results in a total of more than 40 hours in a pay status in a workweek. This will be in such cases as "disaster and personal emergency," which is defined in the State Disaster and Emergency Leave, Rule 3-0320, MOM. In no case may the number of hours of annual leave taken exceed the number of hours the employee is regularly scheduled to work.

Vacation leave must be taken in minimum increments of one-half hour.

PAYMENT UPON TERMINATION

Terminating employees are entitled to lump-sum payment of their outstanding annual leave balance when terminated. The value of unused vacation leave is computed based on the employee's salary rate at the time of termination. Payment is the responsibility of the Office of Public Instruction. At the Superintendent's discretion, an employee may use annual leave to extend their termination date.

Effective:

Revision Effective: 3-02